

## **Superfund Program Implementation Manual FY04/05**

### **Appendix C: Enforcement**

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## Appendix C Enforcement

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## C.A FY04/05 TARGETS AND MEASURES FOR ENFORCEMENT

### C.A.1 OVERVIEW

The Superfund Comprehensive Accomplishments Plan (SCAP) is used by the Assistant Administrator for the Office of Solid Waste and Emergency Response (AA OSWER), the Assistant Administrator for the Office of Enforcement and Compliance Assurance (AA OECA), and senior Superfund managers to monitor the progress each region is making towards achieving the Government Performance and Results Act (GPRA) annual performance goals. In addition, SCAP will continue to be used as an internal management tool to project and track activities that contribute to these GPRA goals and support resource allocation. The program will set national goals based on historical performance and performance expectations within a limited budget for the performance goals in GPRA and track accomplishments in the activities contributing to those goals. Regions should continue to plan and report accomplishments in WasteLAN as they have traditionally.

To more clearly reflect the relationship between GPRA and the SCAP process, program targets and GPRA performance goals are defined as follows:

- **GPRA Annual Performance Goals** are a subset of the overall planning and budgeting information that has traditionally been tracked by the Superfund program offices. They are numerical goals that are established nationally prior to the start of the operating year. **For cost recovery, the emphasis will be on addressing all sites with total outstanding costs greater than or equal to \$200,000 prior to the expiration of the Statute of Limitations (SOL).**
- **Measures** are activities deemed essential to tracking overall program progress. There are two types of measures: GPRA annual performance reporting measures and program measures. GPRA measures **are used to track regional accomplishments** that occur **throughout** the year and are used to evaluate program progress **relative to projected targets that are set for each measure**. Program measures are used to track and/or project the number of actions that each region expects to perform during the year using anticipated resources; for example, the number of PRP search starts. A subset of these program measures will be **selected** for work planning purposes. They are identified with a T in Exhibit C.1.

**Appendix C** includes the enforcement Measures of Success that were devised by **Headquarters** in consultation with the regions to address **enforcement** reforms. These measures have been incorporated into the enforcement program as routine ways of doing business. With these measures, the program can produce a more complete picture of enforcement-related successes and accomplishments at Superfund sites.

In addition to the measures in this manual, the regions should continue to provide information in WasteLAN regarding Potentially Responsible Parties (PRPs) as requested in OSRE memorandum dated July 26, 1999, and Prospective Purchaser Agreements (PPAs) as requested in OSRE's memorandum dated December 6, 1999 entitled "Tracking the Prospective Purchaser Agreement Process in CERCLIS/WasteLAN." Compliance Monitoring should continue as requested in OSWER directive 9872.50. Regions should also use the WasteLAN Environmental Justice Indicator to identify potential Environmental Justice Sites.

## ***C.A.2 PROMOTING THE SUPERFUND ENFORCEMENT PROGRAM***

The Superfund enforcement program GPRA goals and measures will continue to ensure a fairer, more effective, and more efficient Superfund program. The program goals continue to focus on maximizing PRP participation, addressing past costs, reducing transaction costs, entering into fair settlements, and eliminating barriers to redevelopment. The major areas of emphasis for the Superfund enforcement program include the following:

- **Maximizing PRP Involvement/Enforcement First:** Maximizing PRP participation is critical to achieve the greatest possible number of cleanups, and to conserve Trust Fund resources. Key areas of emphasis are early initiation of PRP searches, completing negotiations in a timely manner, and maximizing PRP-lead cleanup activities. EPA will continue to seek to maximize PRP participation at Superfund sites including NPL and Superfund Alternative sites. As a result of the enforcement first strategy, PRPs have undertaken the majority of new cleanup actions over the past years, leveraging Fund resources to maximize total cleanups.
- **Addressing Past Costs  $\geq$  \$200,000:** For cost recovery, the emphasis will be on addressing all sites with total outstanding costs greater than or equal to \$200,000 prior to the expiration of the Statute of Limitations (SOL).
- **Completing Clean-up Negotiations in a Timely Manner:** Remedial Design/Remedial Action (RD/RA) negotiations should be completed within 120 days of the issuance of Special Notice Letters (SNLs). Normally, SNLs are issued at the same time as the signature of the Record of Decision (ROD).
- **Reducing Transaction Costs through *De minimis* Settlements:** EPA will continue to pursue § 122(g) *de minimis* settlements, and resolve the potential liability of qualified small volume waste contributors, at the earliest date possible.
- **Entering Into Fair Settlements/Orphan Share Offers:** EPA will compensate a portion of the Superfund cleanup costs attributable to parties that are financially insolvent as a way to ensure that remaining viable PRPs are not asked to pay for substantially more than their share of the site costs.
- **Eliminating Barriers to Redevelopment/Assessing Request for Prospective Purchaser Agreements (PPAs):** Under the new Brownfields Amendment, parties who qualify as bonafide prospective purchasers, should no longer need PPAs with the Federal government to purchase contaminated property. EPA may consider entering into PPAs in instances where the public interest is served (i.e. where there is likely to be a significant windfall lien, and the prospective purchaser needs to resolve the lien, or where the purchase could potentially provide substantial environmental or community benefit).
- **Providing PRP Oversight :** EPA will continue to focus on efforts to engage in dialogue with PRPs that have settlements with EPA to promote oversight that ensures the development and implementation of protective cleanups; gives careful consideration to the associated costs being charged to PRPs; and maximizes EPA recovery of oversight. EPA will continue to offer to discuss EPA's oversight expectations for upcoming activities with settling PRPs who conduct non-time critical removals, remedial investigations/feasibility studies, remedial designs, or remedial actions during the fiscal year; and issue oversight bills that include appropriate cost documentation.



- **Providing for Responsible Fiscal Management:** EPA will place a high priority on sound fiscal management by managing and collecting Superfund accounts receivable. To accomplish this, program focus will be on:
  - Maximizing site-specific charging (intramural and extramural);
  - Maintaining prompt, current and accurate oversight billing;
  - Maximizing collections of monies due the Trust Fund; and
  - Resolving outstanding collection disputes.
- **Ensuring Compliance with Orders/Settlements:** EPA will continue to monitor compliance of PRP performance and payment obligations under administrative orders, consent decrees, and judgments; ensure compliance; and address substantial noncompliance in a timely manner.
- **Using Special Accounts for Site Cleanup:** EPA will continue to emphasize the use of special accounts for site cleanup. This includes finalizing settlements that provide for deposits to and disbursements from special accounts, approving actual deposits and disbursements, reclassifying special account funds, where appropriate, and closing out such accounts in a timely manner, thus freeing up such funds for future use at other sites, through the general appropriation process.
- **Using Alternative Dispute Resolution (ADR):** EPA is continuing to use ADR as a way to reduce the costs of achieving settlement with PRPs. Also, ADR can be used in other contexts (e.g., disputes with states regarding cleaning up sites).
- **Issuing Unilateral Administrative Orders (UAOs) Equitably:** EPA will issue UAOs to the maximum manageable number of PRPs wherever there is sufficient basis to include them. Issuance of these UAOs will compel those PRPs to participate in, and share the cost of, the specific response actions. The participation of these PRPs, even if only through a financial contribution, will reduce the portion of the cleanup cost that is borne by PRPs who have settled with EPA.

## EXHIBIT C.1 ENFORCEMENT ACTIVITIES

### FY04/05 Enforcement Performance Measures

The following table represents the FY04/05 Enforcement Performance Measures. This table is only relevant for Appendix C: Enforcement.

ACTIVITY	GPRA	EPA SR. MANAGERS	INQUIRIES: CONGRESS/ GAO/OIG/OMB	RESOURCE WORK PLANNING*
Potentially Responsible Party (PRP) Search Starts				P
PRP Search Completions				P
Section 104(e) Referrals and Order Issued				P
Issuance of General Notice Letters (GNLs)				P
Issuance of Special Notice Letters (SNLs)				P
Expanded Site Inspection/Remedial Investigation/Feasibility Study (ESI/RI/FS) Negotiation Starts				P
Remedial Design/Remedial Action (RD/RA) Negotiation Starts (NPL & Superfund Alternative)		✓□		P
Completion or Termination of Negotiations for RD/RA (NPL & Superfund Alternative)		✓□		P
Completion or Termination of Negotiations for Cleanup (RD/RA, Removals, and Other) (NPL & Superfund Alternative)		✓		P
Percentage of Remedial Action Starts Initiated by PRPs at non-Federal Facility NPL & Superfund Alternative Sites		✓□	✓□	T

\* T = Program Target  
P = Program Measure

ACTIVITY	GPRA	EPA SR. MANAGERS	INQUIRIES: CONGRESS/ GAO/OIG/OMB	RESOURCE WORK PLANNING*
Total Response Commitments (Including Dollar Value)	Report dollar value	✓□		P
Enforcement Settlements/ Instruments for RD/RA/Long-Term Response (LR) (Including Dollar Value)		✓□		P
<i>De Minimis</i> Settlements and Number of Parties		✓□	✓	P
Cashout Settlements		✓□		P
Section 106, 106 and 107, 107 Case Resolution		✓□		P
Issuance of Demand Letter				P
Total Cost Recovery Settlements (Including Dollar Value)	<b>Report the value of costs recovered</b>	✓□		P
Past Costs Addressed $\geq$ \$200,000 Via Settlements, Write-Offs, or Referrals	✓□	✓□	✓□	
Recoverable Past Costs That Have Been Addressed by Program to Date Via Settlements, Write-Offs, or Referrals		✓□		P
Number and Amount of CERCLA Penalties Assessed		✓□		P
Number and Amount of CERCLA Supplemental Environmental Projects (SEPs)		✓□		P
Use of Alternative Dispute Resolution (ADR)		✓□		P
Number of Settlements Where EPA Settled Based on Ability-to-Pay Determinations		✓□		P

\* T = Program Target

P = Program Measure

ACTIVITY	GPRA	EPA SR. MANAGERS	INQUIRIES: CONGRESS/ GAO/OIG/OMB	RESOURCE WORK PLANNING*
Prospective Purchaser Agreements (PPAs) Assessed and Finalized		✓ <input type="checkbox"/>		P
Issuance of Comfort/Status Letters		✓ <input type="checkbox"/>		P
Orphan Share - EPA Offer and Compensation		✓ <input type="checkbox"/>		P
Non Exempt De Micromis Parties Settlements and Number of Parties		✓ <input type="checkbox"/>		P
PRP Oversight Administration		✓ <input type="checkbox"/>	✓ <input type="checkbox"/>	T
The number of enforcement actions taken at NPL sites to have PRPs conduct or participate in response activities compared to the total number of sites on the NPL. The percentage and estimated value of PRP commitments to response activities at non-Federal facility sites on the NPL		✓ <input type="checkbox"/>		
The total value of cost recovery settlements and judicial actions achieved, and past costs considered recoverable		✓ <input type="checkbox"/>		
The amount of money EPA has collected from PRPs compared to the total amount achieved in cost recovery settlements and judicial actions		✓ <input type="checkbox"/>		
The estimated amount of money PRPs have committed legally to site cleanup compared to the total amount of funds expended by the Superfund enforcement program		✓ <input type="checkbox"/>		
Settlements Designating Deposits to Special Accounts		✓ <input type="checkbox"/>	✓ <input type="checkbox"/>	P

\* T = Program Target

P = Program Measure

ACTIVITY	GPRA	EPA SR. MANAGERS	INQUIRIES: CONGRESS/ GAO/OIG/OMB	RESOURCE WORK PLANNING*
Deposits into Special Accounts		✓□	✓□	P
Settlements Designating Disbursements from Special Accounts to PRPs		✓□	✓□	P
Disbursements from Special Accounts for Response Actions		✓□	✓□	P
Closure of Special Accounts		✓□	✓□	P
Pre-Remedial Enforcement Action at Superfund Sites	✓□	✓□	✓□	
Windfall Lien Filed		✓□	✓□	P
Windfall Lien Resolution - Assessed and Finalized		✓□	✓□	P

T = Program Target

P = Program Measure

**NOTE:** Accomplishments are pulled from WasteLAN on a quarterly basis. Measures are planned and reported quarterly.

### ***C.A.3 TARGETS AND MEASURES FOR BASELINE ENFORCEMENT***

**Note:** WasteLAN coding requirements contained in the definitions **below** are only for key data elements. For a full list of requirements and suggested data elements, see the *SCAP Coding Guide* for the current FY.

#### ***Criteria for Credit of Enforcement Activities at Superfund Alternative Sites***

For the purposes of this section, references to enforcement activities (i.e. RD/RA negotiation starts and completions) at Superfund Alternative sites apply only to those enforcement activities at sites that the region has determined would achieve a Hazard Ranking System (HRS) score greater than or equal to 28.5. Such response actions must be carried out in a manner not inconsistent with the National Contingency Plan (NCP). Proposed NPL sites are included in this category. Regions should maintain adequate site documentation to support the “Superfund Alternative” designation based on the criteria referenced above. Credit for PRP-lead remedial actions at Superfund Alternative sites will only be given for activities conducted pursuant to enforceable order or agreement. Sites that meet these criteria should be identified in WasteLAN using the special initiatives indicator designating these sites as “Superfund Alternative.”

***a. POTENTIALLY RESPONSIBLE PARTY (PRP) SEARCH STARTS***

**Definition:**

A PRP search identifies PRPs at the site and establishes PRP liability, capability, and financial viability. At all sites, the PRP search activities should be initiated as soon as possible after the region decides that a response (removal or remedial) action is likely to be required at the site. For sites where remedial actions will be conducted, the PRP search should be initiated in time to send a SNL (at least 90 days prior to the obligation of funds for an ESI/RI, RI/FS or RA). For sites where removal actions will be conducted, the PRP search should be initiated as soon as the need for the removal has been identified in order to give a verbal notice of potential liability or to issue a general notice letter.

**Definition of Accomplishment:**

If the National Priorities List (NPL) PRP search (Action Name = NPL RP Search) or non-NPL PRP search (Action Name = Non-NPL PRP Search) is being conducted by a contractor, the actual start date (Actual Start) is considered to be the date the PRP search work assignment or procurement request is signed by the Contracting Officer (CO) or the designated Contracting Officer Representative (COR). The start for both the NPL and non-NPL PRP search is documented by the signed procurement request or work assignment. If the NPL or non-NPL PRP search is conducted by EPA in-house, the actual start date (Actual Start) is the date EPA staff develops the PRP search plan, the date the On-Scene Coordinator (OSC) receives confirmation of a spill identification number from the Regional Finance Office, or the date EPA initiates and documents search activities by some other means.

**Changes in Definition FY02/03- FY04/05:**

None

**Special Planning/Reporting Requirements:**

PRP searches (Action Name = Non-NPL PRP Search or NPL RP Search) are planned and funds requested on a site-specific basis. PRP Search Starts is a program measure.

***b. PRP SEARCH COMPLETIONS***

**Definition:**

A PRP search completion constitutes the completion of the activities taken by the region to identify PRPs at a site. In conducting the PRP search, the region must consider which of the criteria outlined below are cost effective and reasonable to meet relative to the anticipated overall cleanup costs at the site. Upon completion, regions should document in the site file that they have met all reasonable achievable criteria. Criterion 1 is mandatory for all PRP search completions. The PRP search should ideally be completed prior to completion of cleanup negotiations; however, it is recognized that this may not be achievable in all situations.

The recommended criteria for a thorough PRP search are:

1. Initiate a dialogue with early identified PRPs for the purpose of providing an opportunity for PRP input into the PRP search;
2. Collect the financial and contribution data needed to perform equitable share calculations;
3. Follow-up on all leads as a way to identify parties to the site;
4. Make *de minimis* and non-exempt *de minimis* determinations for all parties at the site;
5. Categorize all parties (e.g., Generator/Transporter, Owner/Operator, Small Business (\$2 million or less gross annual revenue and 25 or less employees), Municipal Solid Waste Contributor, etc.); and
6. Perform a financial viability determination on all PRPs asserting ability-to-pay problems.

**Definition of Accomplishment:**

The PRP search (Action Name = NPL RP Search or Non-NPL PRP Search) is complete when all applicable activities described in the Agency's PRP Search Manual have been completed and documentation has been placed in the site file that the region has met all reasonable achievable criteria for the PRP search, a PRP search outcome report with a list of PRPs has been prepared and both the actual completion date (Actual Complete) and the outcome (Qualifier) of the search have been entered into WasteLAN. If no PRPs are found, the region must document in the site file that it has met all reasonable achievable criteria for the PRP search and enter the actual completion date (Actual Complete) and the Qualifier of 'No PRPs Identified (NP)' into WasteLAN. This definition applies to both Phase I (single owner, operator site) and Phase II (multi-generator site) PRP searches.

**Changes in Definition FY02/03- FY04/05:**

Revised de micromis to non-exempt de micromis in the Definition.

**Special Planning/Reporting Requirements:**

PRP search completions (Action Name = Non-NPL PRP Search or NPL RP Search) are planned on a site-specific basis. The search outcome (Qualifier) is to be entered into WasteLAN. The number of PRPs found may be system generated by entering and associating PRPs with sites and selecting an Identification Source of "PRP Search." PRP search completions is a program measure.

**c. SECTION 104(e) REFERRALS AND ORDERS ISSUED****Definition:**

Section 104(e) referrals/orders are enforcement actions to compel PRPs to respond to EPA requests for information or to obtain site access.

**Definition of Accomplishment:**

The date of the memo from the Regional Administrator transmitting the Section 104(e) referral to HQ or to the Department of Justice (DOJ) is recorded in WasteLAN as the actual start date (Actual Start) of the Section 104(e) referral (Action Name = Section 104(e) Ref. Litigation). The date a Section 104(e) Unilateral Administrative Order (UAO) or Administrative Order on Consent (AOC) is signed by the Regional Administrator or delegatee is recorded in WasteLAN as the actual completion date (Actual Complete) of the UAO (Action Name = Unilateral Admin Order) or AOC (Action Name = Admin Order on Consent).

**Changes in Definition FY02/03- FY04/05:**

None.

**Special Planning/Reporting Requirements:**

The actual start date (Actual Start) of the referral (Action Name = Section 104(e) Ref. Litigation) or the actual completion date (Actual Complete) of the order (Action Name = Unilateral Admin Order or Admin Order on Consent) is entered into WasteLAN site-specifically. The Law/Section reported in WasteLAN should be "CERCLA 104(e)" [(Law/Section = CERCLA 104(e))]. This is a program measure.

***d. ISSUANCE OF GENERAL NOTICE LETTERS (GNLs)***

**Definition:**

Letter sent by EPA under Section 122 of CERCLA informing recipients of their potential liability for cleanup actions at the site. It is usually sent out during the PRP search or during preparation for negotiations.

**Definition of Accomplishment:**

This action is accomplished on the date the GNL is signed by the appropriate EPA official and entered into WasteLAN as the SubAction, Notice Letters Issued, with an actual completion date (Actual Complete).

**Changes in Definition FY02/03 - FY04/05:**

None.

**Special Planning/Reporting Requirements:**

General Notice Letters are recorded as a SubAction to PRP search or negotiation actions. Issuance of GNLs is a program measure.

***e. ISSUANCE OF SPECIAL NOTICE LETTERS (SNLs)***

**Definition:**

An SNL is a letter **under Section 122(e) of CERCLA** from EPA to a PRP informing it of its potential liability and **soliciting an** offer to conduct the planned response action(s) at the site. **The SNL** triggers a moratorium **on certain EPA actions** allowing the PRP to consider EPA's invitation to negotiate. The moratorium period varies depending on the response action (ESI/RI/FS, RD, or RA) and can be extended if necessary.

**Definition of Accomplishment:**

This action is accomplished on the date the SNL is signed by the appropriate EPA official and entered into WasteLAN as a SubAction, Special Notice Issued, with an actual completion date (Actual Complete). The date of issuance of the SNL also constitutes the start of negotiations [Action Name = RI/FS Negotiations, RD/RA Negotiations, Negotiations (Generic), or Removal Negotiations].

**Changes in Definition FY02/03 - FY04/05:**

None.

**Special Planning/Reporting Requirements:**

SNLs are recorded as a SubAction to PRP search or negotiation actions. The actual completion date of the SNL is the same as the actual start date (Actual Start) of the applicable negotiation action. Issuance of SNLs is a program measure.

***f. EXPANDED SITE INSPECTION/REMEDIATION INVESTIGATION/FEASIBILITY STUDY (ESI/RI/FS) NEGOTIATION STARTS***

**Definition:**

ESI/RI/FS negotiations are discussions between EPA and the parties on their liability, willingness, and ability to conduct the ESI/RI/FS.



**Definition of Accomplishment:**

ESI/RI/FS negotiations start when:

- ☐ The first SNL is signed by the appropriate EPA official. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RI/FS Negotiations] and the completion (Actual Complete) of the SNL SubAction (SubAction Name = Special Notice Issued); or
- ☐ A Section 122(a) waiver of SNL is signed by the appropriate EPA official with the intent to pursue negotiations without moratorium procedures. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RI/FS Negotiations] and the completion (Actual Complete) of the SNL waiver SubAction (SubAction Name = Notice of S 122 Waiver Issued).

**Changes in Definition FY02/03 - FY04/05:**

None.

**Special Planning/Reporting Requirements:**

If the region does not plan to perform ESI/RI/FS negotiations at a site, negotiation dates should not be placed in WasteLAN. The start of ESI/RI/FS negotiations [Action Name = Negotiations (Generic) or RI/FS Negotiations] should be planned site-specifically. The “Response Actions Sought” are to be entered into WasteLAN. The Response Actions Sought” must include one or more of the following actions: PRP RI/FS, RI/FS, FS, PRP FS, RI, PRP RI, or ESI/RI. The actual start of the negotiation action is the same as the actual complete date (Actual Complete) of the SNL or waiver of SNL. ESI/RI/FS negotiation starts is a program measure.

***g. REMEDIAL DESIGN/REMEDIAL ACTION (RD/RA) NEGOTIATION STARTS (NPL & Superfund Alternative)*****Definition:**

RD/RA negotiations are discussions between EPA and the parties on their liability, willingness, and ability to implement the long-term remedy selected in the Record of Decision (ROD) for the site or Operable Unit (OU).

Credit is given at NPL and Superfund Alternative sites (NPL Status = Proposed for NPL, Currently on Final NPL, or Deleted from Final NPL; or Special Initiatives Indicator = “Superfund Alternative” with NPL Status = Not on the NPL, Removed from the Proposed NPL, Pre-Proposed Site, or Withdrawn) that are not Federal facility sites (Federal Facility Indicator = Not a Federal Facility or Status Undetermined).

**Definition of Accomplishment:**

RD/RA negotiations start when:

- The first SNL is signed by the appropriate EPA official. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations]; or,
- A Section 122(a) waiver of SNL is signed by the appropriate EPA official with the intent to pursue negotiations without moratorium procedures. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations].
- **Subsequent Negotiations** - An interim settlement arises/order is issued for a portion of the site work from an existing set of RD/RA negotiations and the Region does not plan to issue new special notice letter(s). The Region shall establish a new RD/RA negotiation event in WasteLAN with a start date the same as the completion date of the first set of RD/RA negotiations from which the interim settlement/order arose (i.e. Referral of Consent Decree for RD/RA,

Issuance of UAO for RD/RA). This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations].

- **Concurrent Negotiations** - The next phase of negotiations begins before the completion of the current RD/RA negotiations and the Region does not plan to issue new special notice letter(s). The Region shall establish a new RD/RA negotiation event in WasteLAN using **as the start date of the new RD/RA negotiations** whichever is earlier either the date concurrent negotiations are first documented in meeting minutes or in a Memorandum for the Record or the date the letter is signed by the appropriate EPA official accepting the Good Faith Offer (GFO) from PRPs that **delineates** the negotiations. This date is reported in WasteLAN as the start (Actual Start) of negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations].

### **Changes in Definition FY02/03 - FY04/05:**

None.

### **Special Planning/Reporting Requirements:**

If the region does not plan to conduct RD/RA negotiations, dates should not be entered into WasteLAN. The start of RD/RA negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations] is planned site-specifically. The "Response Actions Sought" are to be entered into WasteLAN. The "Response Actions Sought" must include one or more of the following actions: Remedial Design, Remedial Action, PRP RD, or PRP RA. The actual start of the negotiation action is the same as the actual completed date (Action Complete) of the SNL or waiver of SNL. Superfund Alternative sites should be identified in WasteLAN using the Special Initiatives Indicator of "Superfund Alternative". RD/RA negotiation starts is a program measure.

### ***h. COMPLETION OR TERMINATION OF NEGOTIATIONS FOR RD/RA (NPL & Superfund Alternative)***

#### **Definition:**

RD/RA negotiations are discussions between EPA and the parties on their liability, willingness, and ability to implement the long-term remedy selected in the ROD for the site or Operable Unit (OU).

RD/RA negotiations end when the region decides how to proceed with the RD/RA.

#### **Definition of Accomplishment:**

Credit is given at NPL and Superfund Alternative sites (NPL Status = Proposed for NPL, Currently on Final NPL, or Deleted from Final NPL; or Special Initiatives Indicator = "Superfund Alternative" with NPL Status = Not on the NPL, Removed from the Proposed NPL, Pre-Proposed Site, or Withdrawn) that are not Federal facility sites (Federal Facility Indicator = Not a Federal Facility or Status Undetermined) when:

- A signed Consent Decree (CD) under Section 106 or Sections **106 and 107** and a 10-point analysis for RD or RA is referred by the Regional Administrator to either DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the signed transmittal memo, which is the CD (Action Name = Consent Decree) actual start date (Actual Start); or
- A Unilateral Administrative Order (UAO) for RD or RA is signed by the Regional Administrator or delegatee. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date the UAO (Action Name = Unilateral Admin Order) is signed, which is the UAO actual completion date (Actual Complete); or

- ☐ A Section 106 or Sections 106 and 107 injunctive referral to compel the PRP to perform the RD or RA as specified in a UAO is referred by the Regional Administrator to DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the Regional Administrator's transmittal memo, which is the litigation [Action name = Litigation (Generic), Section 106 & 107 Litigation, or Section 106 Litigation] actual start date (Actual Start); or
- ☐ EPA and PRPs are notified by a letter from DOJ of the date (Actual Complete) on which they will proceed to trial under an existing case [Action Name = Negotiations (Generic) or RD/RA Negotiations]; or
- ☐ An Administrative Order on Consent (AOC) or Consent Agreement (CA) for RD only is signed by the Regional Administrator or delegatee. Where an AOC or CA for RD only is issued, no credit will be given for the subsequent RA negotiation starts and completions. Credit will, however, be given under Total Response Settlements for the referral of a CD for RA to DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date the AOC or CA is signed, which is the AOC (Action Name = Admin Order on Consent or Consent Agreement) actual completion (Actual Complete); or
- ☐ If Special Notice Letters are issued specifically to initiate RD/RA Negotiations and the negotiations result in an amendment to an existing settlement to include RD/RA, the negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date the amended settlement is signed. This amendment date is tracked as the actual completion date (Actual Complete) of the settlement SubAction, Enforcement Action Amended; or
- ☐ Funds are obligated through a contract modification or work assignment signed by the CO, an IAG signed by the other Federal agency, or a Cooperative Agreement signed by the designated Regional official for a Fund-financed RD at NPL or Superfund Alternative sites or RA at NPL sites. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date funds are obligated. If funds are not available and the region decides a UAO is not appropriate, the negotiation [Action Name = Negotiation (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the written documentation of the region's decision not to issue a UAO.

### **Changes in Definition FY02/03- FY04/05:**

None.

### **Special Planning/Reporting Requirements:**

This is a program measure. RD/RA negotiation completions are planned site-specifically. The negotiation completion date is reported in WasteLAN as the actual completion date (Actual Complete) of either generic negotiations or RD/RA negotiations [Action Name = Negotiations (Generic) or RD/RA Negotiations]. The "Response Actions Sought" and the outcome of the negotiations [Other Outcome(s) Selected or Outcome Actions Selected] also must be reported in WasteLAN. The "Response Actions Sought" must include one or more of the following actions: Remedial Design, Remedial Action, PRP RD, or PRP RA. Superfund Alternative sites should be identified in WasteLAN using the Special Initiatives Indicator of "Superfund Alternative".

### ***i. COMPLETION OR TERMINATION OF NEGOTIATIONS FOR CLEANUP (RD/RA, REMOVALS, AND OTHER) (NPL & Superfund Alternative)***

#### **Definition:**

Cleanup negotiations are discussions between EPA and the parties on their liability, willingness, and ability to conduct the cleanup. Negotiations are complete (for NPL and Superfund Alternative sites) when a decision has been made as to how the region will proceed with the cleanup.

### Definition of Accomplishment:

Credit is given at NPL and Superfund Alternative sites (NPL Status = Proposed for NPL, Currently on Final NPL, or Deleted from Final NPL; or Special Initiatives Indicator = “Superfund Alternative” with NPL Status = Not on the NPL, Removed from the Proposed NPL, Pre-Proposed Site, or Withdrawn) that are not Federal facility sites (Federal Facility Indicator = Not a Federal Facility or Status Undetermined) when:

- ☐ A signed Consent Decree (CD) under Section 106 or Sections 106 and 107 and a 10-point analysis for RD, RA, groundwater monitoring activities post ROD, institutional controls, or a time-critical or NTC removal is referred by the Regional Administrator to either DOJ or HQ. The negotiation [Action Name = Negotiations (Generic), RD/RA Negotiations, or Removal Negotiations] actual completion date (Actual Complete) is the date of the signed transmittal memo, which is the CD (Action Name = Consent Decree) actual start date (Actual Start); or
- ☐ A Unilateral Administrative Order (UAO) for RD, RA, groundwater monitoring activities post ROD, institutional controls, or a time-critical or NTC removal is signed by the Regional Administrator or delegatee. The negotiation [Action Name = Negotiations (Generic), RD/RA Negotiations, or Removal Negotiations] actual completion date (Actual Complete) is the date the UAO (Action Name = Unilateral Admin Order) is signed which is the UAO actual completion date (Actual Complete); or
- ☐ An Administrative Order on Consent (AOC) or Consent Agreement (CA) for RD only, or groundwater monitoring activities post-ROD, or institutional controls is signed by the Regional Administrator or delegatee. Where an AOC or CA for RD only is signed, no credit will be given for the subsequent RA negotiation starts and completions. Credit will, however, be given under Total Response Settlements for the referral of a CD for RA to DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date the AOC or CA is signed, which is the AOC (Action Name = Admin Order on Consent) or CA (Action Name = Consent Agreement) actual completion (Actual Complete); or
- ☐ An AOC or CA for a time-critical or NTC removal is signed by the Regional Administrator or delegatee. The negotiation [Action Name = Negotiations (Generic) or Removal Negotiations] actual completion date (Actual Complete) is the date the AOC or CA is signed, which is the AOC (Action Name = Admin Order on Consent) or CA (Action Name = Consent Agreement) actual completion date (Actual Complete); or
- ☐ A Section 106 or Sections 106 and 107 injunctive referral to compel the PRP to perform the cleanup (RD or RA) as specified in a UAO is referred by the Regional Administrator to DOJ or HQ. The negotiation [Action Name = Negotiations (Generic) or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the Regional Administrator’s transmittal memo, which is the litigation [Action Name = Litigation (Generic), Section 106 & 107 Litigation, or Section 106 Litigation] actual start date (Actual Start); or
- ☐ A Prospective Purchaser Agreement (PPA) implementing the entire remedy is signed by the Regional Administrator or delegatee. Credit is not given for negotiation completions as a result of a PPA which implements part of the remedy. The negotiation [Action Name = Negotiations (Generic), Removal Negotiations or RD/RA Negotiations] actual completion date (Actual Complete) is the date the PPA (Action Name = Admin Order on Consent or Consent Agreement and Enf. Instrument Category = Prospective Purchaser Agreement) is signed by the Regional Administrator or delegatee which is the actual completion date (Actual Complete) of the AOC or CA; or
- ☐ EPA and PRPs are notified by a letter from DOJ of the date (Actual Complete) on which they will proceed to trial under an existing case [Action Name = Negotiations (Generic) or RD/RA Negotiations]; or

- For settlements that are amended to include cleanup actions, the negotiation [Action Name = Negotiations (Generic), RD/RA Negotiations, or Removal Negotiations] actual completion date (Actual Complete) is the date the amended instrument is signed. This amendment date is tracked as the actual completion date (Actual Complete) of the settlement SubAction, Enforcement Action Amended; or
- Funds are obligated through a contract modification or work assignment signed by the CO, an IAG signed by the other Federal agency, or a Cooperative Agreement signed by the designated Regional official for a Fund-financed time-critical or NTC removal or RA. Only those sites that are final on the NPL are eligible for Fund-financed RAs. The negotiation [Action Name = Negotiations (Generic), Removal Negotiations, or RD/RA Negotiations] actual completion date (Actual Complete) is the date funds are obligated. If funds are not available and the region decides a UAO is not appropriate, the negotiation [Action Name = Negotiations (Generic), Removal Negotiations, or RD/RA Negotiations] actual completion date (Actual Complete) is the date of the written documentation of the region's decision not to issue the UAO.

### **Changes in Definition FY02/03 - FY04/05:**

Changed from a program target to a program measure.

### **Special Planning/Reporting Requirements:**

This is a program measure. The negotiation completion date is reported in WasteLAN as the actual completion date (Actual Complete) of either generic negotiations, RD/RA negotiations, or removal negotiations [Action Name = Negotiations (Generic), RD/RA Negotiations, or Removal Negotiations]. The "Response Actions Sought" and the outcome of the negotiations [Other Outcome(s) Selected or Outcome Actions Selected] also must be reported in WasteLAN. Regions will receive credit for the completion of cleanup negotiations that result in the signature of an AOC or CA with a prospective purchaser that is implementing the entire remedy. Superfund Alternative sites should be identified in WasteLAN using the Special Initiatives Indicator of "Superfund Alternative".

### ***j. PERCENTAGE OF REMEDIAL ACTION STARTS INITIATED BY PRPS AT NON-FEDERAL FACILITY NPL AND SUPERFUND ALTERNATIVE SITES***

#### **Definition:**

A Remedial Action (RA) is the implementation of the remedy selected in the ROD, and for the purposes of this measure, occurs at non-Federal facility NPL and Superfund Alternative sites.

#### **Definition of Accomplishment:**

This measure is the percentage of enforcement lead (i.e., PRP-financed in the RA Start Definition of Accomplishment in Appendix B) RA starts at non-Federal facility NPL and Superfund Alternative sites. It is calculated as the enforcement percentage of the total number of non-Federal facility RA starts. The program target is to achieve 70 percent or more PRP-lead RA starts at non-Federal facility NPL and Superfund Alternative sites.

**DISCLAIMER:** Regions will receive credit in the management of the Superfund program for "start" of a remedial action even though "initiation of physical on-site construction" may not have occurred for purposes of calculating a cost recovery statute of limitations. The date found in the remedial action actual start column of a CERCLIS/WasteLAN report is a programmatic measure only, and cannot be relied on upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. EPA reserves the right to change such data at any time without public notice.

### **Changes in Definition FY02/03 - FY04/05:**

Change from GPRA annual performance goal to program target.

### **Special Planning/Reporting Requirements:**

This is a program target. See special planning requirements in Appendix B, Section **B.B.3.m**, RA Start definition. Superfund Alternative sites should be identified in WasteLAN using the Special Initiatives Indicator of “Superfund Alternative”.

### ***k. TOTAL RESPONSE COMMITMENTS (INCLUDING DOLLAR VALUE)***

#### **Definition:**

Total Response Commitments is the total universe of CERCLA enforcement instruments where the parties agree to conduct cleanup work and/or make cash payments toward future response costs at a site. This measure will require reporting of both the number of enforcement instruments as well as the estimated value of the response work and/or cash payments toward future response costs pursuant to each of those instruments.

#### **Definition of Accomplishment:**

Enforcement Instruments at non-Federal facility NPL, Superfund Alternative, and non-NPL sites include:

- A Consent Decree (CD) signed by the Regional Administrator and PRPs and 10-point analysis is transmitted by the Regional Administrator to DOJ or HQ, under Section 106 or **Sections 106 and 107** for PRPs to conduct or pay for the response action [ESI/RI, RI, RI/FS, FS, RD, RA, groundwater monitoring activities post-ROD, institutional controls, time-critical or NTC removal]. Credit for the CD referral (Action Name = Consent Decree) is given on the date on which the Regional Administrator’s transmittal memo is sent to DOJ or to HQ. **This date is** recorded in WasteLAN as the actual start date (Actual Start). **Types of CDs** include CDs for mixed work, preauthorized mixed funding, *de minimis*, and cashout settlements. The appropriate Enforcement Instrument Categories Selected also must be entered into WasteLAN.
- A Unilateral Administrative Order (UAO) is signed by the Regional Administrator or delegatee for response work, and at least one of the PRPs has provided notice of intent to comply unconditionally. Commitment credit is given on the date of the PRP’s written notice of intent to comply with the order. This is reported in WasteLAN as the actual completion date (Actual Complete) of the Notice of Intent to Comply SubAction (SubAction Name = PRPs Ntfy EPA, Intent to Comply). The actual completion date (Actual Complete) of the order (Action Name = Unilateral Admin Order) is the date it is signed.

If a PRP initially complies with a UAO, credit will be given for the UAO when the first PRP provides written notice of intent to comply. If, at a later date, the PRP agrees to a CD for the same work, credit will be given for the CD when it is referred by memo to DOJ or HQ. At this point the region will receive credit for the CD only and not the UAO. When adding the Consent Decree Action, the region should identify the UAO as the predecessor action through Action Relationships and enter the estimated value of the UAO as the estimated value of the CD if the CD covers the same work. If the CD covers more work than the UAO it replaces, a revised estimate may be necessary. The WasteLAN reporting requirements for the CD apply.

- An Administrative Order on Consent (AOC) or Consent Agreement (CA) is signed by the Regional Administrator or delegatee for PRPs to perform or pay for an ESI/RI, RI, RI/FS, FS, time-critical or NTC removal, RD, monitored natural attenuation, institutional controls, or groundwater monitoring post-ROD. The date the AOC or CA is signed (Action Name = Admin Order on Consent or Consent Agreement (CA)) is reported in WasteLAN as the actual completion date (Actual Complete).

- Commitment credit is also given when an AOC or Consent Agreement (CA) is signed that provides protection from potential future liability to a prospective purchaser that is implementing the remedy. The actual completion date (Actual Complete) is the date the AOC or CA (Action Name = Admin Order on Consent or Consent Agreement (CA) and Enf Instrument Category Selected = Prospective Purchaser Agreement) is signed by the Regional Administrator or delegatee.

Total Response Commitments will be reported as a combined total of CDs, CAs, AOCs, and UAOs, where response actions have been achieved and/or parties agree to make cash payments toward future response costs at a site. The value of Total Response Commitments is based on the estimated value of PRP response work and/or payments made by responsible parties toward future response costs at a site.

An enforcement instrument is active until the provisions of the instrument or another document incorporated by reference is completed including payment provisions and monitoring (with the exception of any activity related to record retention). (The CD, AOC, CA, or UAO has an Overall Compliance Status of "Closed Order/Settlement"; and the SubAction = Closed Order or Settlement, or the SubAction = Closed Order or Settlement with Potential for Penalty Claim has an Actual Completion Date). In addition, a UAO that is converted to a CD is no longer active.

### **Changes in Definition FY02/03- FY04/05:**

Added closed order or settlement. For UAOs for response work, commitment credit is given on the date of the PRP's written notice of intent to comply with the order.

### **Special Planning/Reporting Requirements:**

The applicable "Response Actions Pd by Parties," the "Work the PRP Will Perform - Value" (see supplement to: OSWER Directive #9200.3-14-1a) or the "Federal Costs Settled - Future", "Other Relief Achieved", if applicable; and, if necessary, the "Enforcement Instrument Categories Selected" are to be reported in WasteLAN. Settlement credit will be given for an AOC or CA with a prospective purchaser if "Prospective Purchaser Agreement" is the selected enforcement instrument category. Existing settlements for ESI/RI, RI/FS or FS that are amended to include RD should be reported in WasteLAN. The date the amendment is signed is the actual completion date (Actual Complete) of the SubAction "Enforcement Action Amended." The region should also indicate the "Response Actions Pd by Parties" added under the settlement. Amended Instruments will not count for credit in the current year; however, the Total Response Commitments will be included in the program to-date dollar amount. Dollars received in a cashout settlement should be deposited in an interest bearing special account if site-specific conditions warrant. See the measure, Settlements Designating Deposits to Special Accounts, for more information. This is a program measure. The "Work the PRP Will Perform - Value" and "Federal Costs Settled - Future" (i.e., the value of total response commitments) will be reported for GPRA.

## ***1. ENFORCEMENT SETTLEMENTS/INSTRUMENTS FOR RD/RA/Long-Term Response (LR) (Including Dollar Value)***

### **Definition:**

This measure is a subset of the universe of "Total Response Commitments." This is a measure of CERCLA enforcement settlements (CDs, AOCs, or CAs), or **other enforcement** instruments (UAOs) where the parties agree to conduct remedial (RD, RA, or LR) response work. This measure will require reporting of both the number of **enforcement settlements/instruments**, as well as the estimated value of the response work pursuant to each of those settlements/instruments.

### **Definition of Accomplishment:**

Enforcement Instruments at non-Federal facility NPL, Superfund Alternative, and non-NPL sites include:



## OSWER Directive 9200.3-14-1G-Q

- A Consent Decree (CD) signed by the Regional Administrator and PRPs and 10-point analysis is transmitted by the Regional Administrator to DOJ or HQ, under Section 106 or **Sections 106 and 107**, for PRPs to conduct or pay for the remedial or long-term response action [RD, RA, or LR]. Credit for the CD referral (Action Name = Consent Decree) is given on the date on which the Regional Administrator's transmittal memo is sent to DOJ or to HQ. **This date is** recorded in WasteLAN as the actual start date (Action Start). **Types of CDs** include CDs for mixed work, preauthorized mixed funding, *de minimis*, and cashout settlements. The appropriate Enforcement Instrument Categories Selected also must be entered into WasteLAN.
- Unilateral Administrative Order (UAO) for RD, RA, or LR is signed by the Regional Administrator or delegatee, and at least one of the PRPs has provided notice of intent to comply unconditionally. For UAOs for RD, RA, or LR, commitment credit is given on the date of the PRP's written notice of intent to comply with the order. This is reported in WasteLAN as the actual completion date (Actual Complete) of the Notice of Intent to Comply SubAction (SubAction Name = PRPs Ntfy EPA, Intent to Comply). The actual completion date (Actual Complete) of the order (Action Name = Unilateral Admin Order) is the date it is signed.

If a PRP initially complies with a UAO, credit will be given for the UAO when the first PRP provides written notice of intent to comply. If, at a later date, the PRP agrees to a CD for the same work, credit will be given for the CD when it is referred by memo to DOJ or HQ. At this point, the region will receive credit for the CD only and not the UAO. When adding the Consent Decree Action, the region should identify the UAO as the predecessor Action through Action Relationships and enter the estimated value of the UAO as the estimated value of the CD if the CD covers the same work. If the CD covers more work than the UAO it replaces, a revised estimate of response value may be necessary. The WasteLAN reporting requirements for the CD apply; or

- An Administrative Order on Consent (AOC) or Consent Agreement (CA) is signed by the Regional Administrator or delegatee for RD only, or a cashout settlement of *de minimis* parties for RA, or a LR such as groundwater monitoring post-ROD, or institutional controls. The date the AOC or CA is signed (Action Name = Admin Order on Consent **(AOC)** or Consent Agreement **(CA)**) is reported in WasteLAN as the actual completion date (Actual Complete).
- Credit is also given when an AOC or CA is signed for RD, RA, or LR work, and provides protection from potential future liability to a prospective purchaser that is implementing the remedy. The actual completion date (Actual Complete) is the date the AOC or CA (Action Name = Admin Order on Consent **(AOC)** or Consent Agreement **(CA)** and Enf Instrument Category Selected = Prospective Purchaser Agreement) is signed by the Regional Administrator or delegatee.

Enforcement Settlements/Instruments for RD, RA, or LR will be reported as a combined total of CDs, UAOs (with Notice of Intent to Comply), AOCs, and CAs where RD, RA or LR actions have been achieved. The value of RD, RA, or LR commitments is based on the estimated value of PRP response work and/or payments made by responsible parties toward future response work (i.e., cashouts).

### Changes in Definition FY02/03 - FY04/05:

None.

### Special Planning/Reporting Requirements:

The applicable "Response Actions Pd by Parties," the "Work PRP Will Perform - Value" of the response actions the PRPs are performing (see supplement to: OSWER Directive #9200.3-14-1a), or the "Federal Costs Settled - Future" and, if necessary, the "Enforcement Instrument Categories Selected" are to be reported in WasteLAN. Existing settlements for ESI/RI, RI/FS, or FS that are amended to include RD should be reported in WasteLAN. The date that the amendment is signed is the actual completion date (Actual Complete) of the SubAction "Enforcement Action Amended." The region should also indicate the "Response Actions Pd by Parties" added under the settlement/ instrument. Amended Instruments will not count for credit in the current year; however, the settlement/instrument will be included in the program to-date



amount. Enforcement Settlements/Instruments for RD/RA/ LR will be reported in the ENFR-03 report - Settlement type = "RD/RA/LR Only" category. This is a program measure.

### ***m. DE MINIMIS SETTLEMENTS AND NUMBER OF PARTIES***

#### **Definition:**

This measure reports the total number of administrative or judicial settlements that are reached under Section 122(g) of CERCLA, with PRPs qualified as de minimis. This type of settlement results in PRPs paying a minor portion of the estimated response costs at the site, and is embodied in a CD or an AOC. If the total response costs at the site exceed \$500,000 (excluding interest), the AOC can only be signed by the Regional Administrator or delegatee after prior written approval from DOJ. If DOJ does not approve or disapprove the order within 30 days, the order is considered approved and can then be signed by the region. The DOJ and the Regional Administrator or delegatee can agree to extend the 30-day period if necessary.

This measure will examine the total number of de minimis settlements under Section 122(g), the number of PRPs who sign such settlements, and the number of sites at which de minimis settlements were signed.

#### **Definition of Accomplishment:**

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites for de minimis settlements in the following two categories.

Category 1: De minimis settlements include:

- ☐ An Administrative Order on Consent (AOC) (Action Name = Admin Order on Consent) signed by the Regional Administrator or delegatee. **The date the AOC is signed is** reported in WasteLAN as the actual completion date (Actual Complete) **of the AOC (Action Name = Admin Order on Consent).**
- ☐ A memorandum transmitting the Consent Decree (CD) (Action Name = Consent Decree) signed by **the Regional Administrator and the de minimis parties to DOJ or HQ. The date of the transmittal memorandum is** reported in WasteLAN as the actual start date (Actual Start).

The number of signatories to the settlement is system generated in WasteLAN from the identification of the PRPs who have signed the settlement.

Category 2: Early de minimis settlements include:

- An **Administrative Order on Consent (AOC)** (Action Name = Admin Order on Consent) signed by the Regional Administrator or delegatee prior to the first remedy selection (ROD) at the site, or prior to a subsequent ROD which addresses response costs that are included in the settlement. The date the AOC is signed is reported in WasteLAN as the actual completion date (Actual Complete) of the AOC (Action Name = Admin Order on Consent).
- A memorandum transmitting the **Consent Decree (CD)** (Action Name = Consent Decree) signed by **the Regional Administrator and the de minimis parties and the Regional Administrator to DOJ or HQ prior to the first remedy selection (ROD) at the site or prior to a subsequent ROD which addresses response costs that are included in the settlement. The date of the transmittal memorandum is** reported in WasteLAN as the actual start date (Actual Start) of the CD (Action Name = Consent Decree).

The number of signatories to the settlement is system generated in WasteLAN from the identification of the PRPs who have signed the settlement.

### **Changes in Definition FY02/03- FY04/05:**

Removed the request for the Regions to complete the *de minimis* Settlement Survey Form from Additional Reporting Requirements. Changed *De micromis* Settlements to Non-exempt De micromis Parties Settlements. Changed from program target and a GPRA annual performance reporting measure to a program measure.

### **Special Planning/ Reporting Requirements:**

This is a program measure. The following information should be entered into WasteLAN for both Category 1 and Category 2 settlements:

- ☐ Enforcement Instrument Categories Selected of *de minimis*;
- ☐ PRPs that signed the settlement (Parties Associated with Action, Party Name);
- ☐ Dollar amount that will be used for current, future, or past work covered by the settlement [Work PRP Will Perform - Value, Federal Costs Settled - Past and/or Federal Costs Settled - Future (as applicable)]; and
- ☐ Applicable Response Actions Pd by Parties, Other Relief Achieved, or Response Actions Reimbursed.

**To indicate the *de minimis* PRPs that signed the settlement, the following information must be entered for each party on the Party Search/Information, Involvement tab:**

- Basis of Liability of “*De Minimis* party”; and
- Involvement Type of “Owner”, “Generator” or “Transporter”.

Since many *de minimis* settlements are cashouts, regions also must enter an Enforcement Instrument Category of “Cashout.” Dollars received in a *de minimis* cashout settlement should be deposited in an interest bearing special account if site-specific conditions warrant. See the Settlements Designating Deposits to Special Accounts measure for additional information. The number of signatories to the settlement is system generated from the identification of the PRPs who have signed the settlement.

### **Additional Reporting Requirements:**

Regions are requested to provide site-specific targets for *de minimis* settlements. During the fiscal year, regions can change sites within the target number without OSRE approval, but OSRE should be informed of any changes.

(Also see Non-exempt De Micromis Parties Settlements and Number of Parties.)

## ***n. CASHOUT SETTLEMENTS***

### **Definition:**

This measure reports the total number of administrative or judicial settlements where the parties agree to make cash payments toward future response costs at a site.

### **Definition of Accomplishment:**

Credit is given when:

- The Regional Administrator transmits the cashout CD (Action Name = Consent Decree) to DOJ or HQ as recorded in WasteLAN as the actual start date (Actual Start); or

- ☐ The Regional Administrator or delegatee signs the AOC (Action Name = Admin Order on Consent) for the cashout settlement as recorded in WasteLAN as the actual completion date (Actual Completion).

### **Changes in Definition FY02/03 - FY04/05:**

None.

### **Special Planning/Reporting Requirements:**

This is a program measure. Regions must enter the appropriate Enforcement Instrument Category “Federal Costs Settled - Future”, “Response Actions Pd by Parties”, and/or “Other Relief Achieved”. Dollars received in a cashout settlement should be deposited in an interest bearing special account if site-specific conditions warrant. See the measure, Settlements Designating Deposits to Special Accounts, for more information.

### ***o. SECTION 106, 106 and 107, 107 CASE RESOLUTION (Including Claim in Bankruptcy)***

#### **Definition:**

Case resolution is the conclusion of a Section 106, 106 and 107, 107 judicial action, or Claim in Bankruptcy by full settlement, final judgment, case dismissal, or case withdrawal, or final judgment.

#### **Definition of Accomplishment:**

Credit for case resolution is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites when:

- ☐ A Consent Decree (CD) is entered in the court and signed by the judge fully addressing the complaint with all parties;
- ☐ The region receives a memo or letter from DOJ withdrawing the case;
- ☐ A decision document is submitted by the judge dismissing the case; or
- ☐ A trial has concluded and a judgment rendered and signed by the judge fully addressing the complaint.

The Litigation or case resolution (Action Name = Litigation (Generic), Section 106 & 107 Litigation, Section 107 Litigation, Section 106 Litigation, or Claim in Bankruptcy Proceeding) actual completion date (Actual Complete) is defined as follows:

- Date full settlement CD is entered. This is the actual completion date (Actual Complete) of the CD, actual completion date of the SubAction = Entered by Court, and the litigation or bankruptcy action actual completion date (Actual Complete);
- Date case is withdrawn (SubAction Name = Case Withdrawn) as the SubAction completion and litigation or bankruptcy actual completion date (Actual Complete);
- Date case is dismissed (SubAction Name = Case Dismissed) as the SubAction and litigation or bankruptcy actual completion date (Actual Complete); or
- Date judgment is entered (Action Name = Judicial/Civil Judgment) as the judgment and the litigation or bankruptcy actual completion date (Actual Complete).

### **Changes in Definition FY02/03 - FY04/05:**

None.

### **Special Planning/Reporting Requirements:**

This is a program measure.

***p. ISSUANCE OF DEMAND LETTER***

**Definition:**

A Section 122(e) letter issued from EPA to the PRP requesting that the PRP reimburse the Fund for a specific amount associated with one or more response activities. Demand letters are typically sent for each separate response activity.

**Definition of Accomplishment:**

This Action is accomplished on the date (Actual Complete) the demand letter is signed by the appropriate EPA official and recorded in WasteLAN as a Action (Action Name = Demand Letters Issued) to the negotiation actions, Administrative/Voluntary Cost Recovery action, UAO, Litigation actions, or Decision Documents.

**Changes in Definition FY02/03 - FY04/05:**

None.

**Special Planning/Reporting Requirements:**

This is a program measure.

***q. TOTAL COST RECOVERY SETTLEMENTS (INCLUDING DOLLAR VALUE)***

**Definition:**

Total Cost Recovery Settlements is the total universe of CERCLA enforcement cost recovery settlements where the parties agree to pay past costs to the Agency. This measure will require reporting of both the number of settlements as well as the value of the past costs to be recovered pursuant to each of these settlements.

**Definition of Accomplishment:**

Settlements at non-Federal facility NPL, Superfund Alternative, and non-NPL sites include:

- ***Consent Decrees*** - Credit is given for CD settlements (Action Name = Consent Decree) for RD/RA with a cost recovery component, or CDs for cost recovery only that were not a result of a previous litigation referral, on the date of the Regional Administrator's memo transmitting the settlement to DOJ or HQ and recorded in WasteLAN as the actual start date (Actual Start).

For CD settlements that are for cost recovery only and result from a previous litigation referral, regions should not add a CD start date (Actual Start). Only the lodged (SubAction Name = Lodged by DOJ) and entered (SubAction Name = Entered by Court) SubActions, their actual completion dates (Actual Complete), and the actual completion date (Actual Complete) of the CD are recorded. The actual completion date of the CD is the date it is entered by the court. If the actual completion date for the Lodged by DOJ SubAction exists, credit will be given in the FY identified by this completion date.

- ***Administrative Settlements*** - Credit is given on the date that the Regional Office or DOJ receives payment from the PRPs in direct response to a demand letter for voluntary cost recovery or the date the Regional Administrator or delegatee signs the Administrative Order on Consent (AOC) or Consent Agreement (CA) for cost recovery. The date must be reported in WasteLAN as the actual completion date (Actual Complete) of the administrative/voluntary cost recovery (Action Name = Admin/Voluntary Cost Recovery), AOC (Action Name = Admin Order on Consent), or CA (Action Name = Consent Agreement).

Total Cost Recovery Settlements will be reported as the combined total of CDs, CAs, Administrative/Voluntary Cost Recovery actions and AOCs where cost recovery has been achieved.

An enforcement instrument is active until the provisions of the instrument or another document incorporated by reference is completed including payment provisions and monitoring (with the exception of any activity related to record retention). (The CD, AOC, or CA has an Overall Compliance Status of “Closed Order/Settlement”; and the SubAction = Closed Order or Settlement, or the SubAction = Closed Order or Settlement with Potential for Penalty Claim has an **actual completion date (Actual Complete)**).

### **Changes in Definition FY02/03 - FY04/05:**

Added closed order or settlement.

### **Special Planning/Reporting Requirements:**

This is a program measure. The “Federal Costs Settled - Past” must be entered into WasteLAN. This measure will be reported in the ENFR-03 report. The “Federal Costs Settled - Past” (i.e. the value of costs recovered) will be reported for GPRA.

### ***r. PAST COSTS ADDRESSED ≥ \$200,000 VIA SETTLEMENTS, WRITE-OFFS, OR REFERRALS***

#### **Definition:**

Past Costs Addressed ≥ \$200,000 is the decision either to take cost recovery action by use of administrative cost recovery settlement, to transmit a Sections **106 and 107** or 107 judicial referral for cost recovery, including settlements for past costs under a CD (with no prior litigation referral); to prepare a decision document or 10-point settlement analysis document not to pursue cost recovery, or to file a claim in bankruptcy.

It only covers cases where EPA has incurred costs ≥ \$200,000. It is vital to the management of the cost recovery program that sites with upcoming Statute of Limitations (SOLs) be addressed prior to the expiration of the SOL. Therefore, regions will not be allowed to substitute FY 04/05 targeted sites that have SOLs occurring in or before FY 04/05 or the first quarter of FY 04/05.

#### **Definition of Accomplishment:**

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites.

**Administrative Settlements** - Credit is given on the date the Regional office or DOJ receives payment from the PRPs in direct response to a demand letter for voluntary cost recovery, or the date the Regional Administrator or delegatee signs the Administrative Order on Consent (AOC) or Consent Agreement (CA) that recovers 100 percent of the Trust Fund expenditures or settles a claim where the total response costs are less than \$500,000. The accomplishment of the administrative settlement is recorded in WasteLAN as the actual completion date (Actual Complete) of the administrative/voluntary cost recovery (Action Name = Admin/Voluntary Cost Recovery), AOC (Action Name = Admin Order on Consent), or CA (Action Name = Consent Agreement). If the settlement is compromised and total response costs are more than \$500,000, the AOC must be sent to DOJ for approval prior to signature by the Regional Administrator or delegatee.

**Section 107 or 106 and 107 Judicial Referrals** - Credit is given on the date of the Regional Administrator’s memo transmitting the referral to DOJ or HQ [Action Name = Litigation (Generic), Section 107 Litigation, or Section 106 & 107 Litigation] as recorded in WasteLAN as the actual start date (Actual Start).

This includes Consent Decree (CD) settlements (Action Name = Consent Decree) for RD/RA with a cost recovery component or CD settlements for cost recovery only that were not the result of a prior litigation referral. Credit is given for these CD settlements on the date of the Regional Administrator’s memo transmitting the settlement to DOJ or HQ and recorded in WasteLAN as the actual start date (Actual Start).

CD settlements that are for cost recovery only and result from a previous litigation referral do not count towards **this** target. The start date (Actual Start) for these actions is not reported in WasteLAN. Only the lodged (SubAction Name = Lodged by DOJ) and entered (SubAction Name = Entered by Court) SubActions, the SubAction actual completion date (Actual Complete), and the actual completion date (Actual Complete) of the CD are recorded. The actual completion date of the CD is the date it is entered by the court.

**Decision Documents not to Pursue Cost Recovery** - Credit is given when the decision document (Action Name = Cost Recovery Decsn Docmt - No Sue) is signed by the Regional office and recorded in WasteLAN as the actual completion date (Actual Complete). The decision not to pursue cost recovery also may be documented in an **enforcement instrument** 10-point settlement analysis. For both the Cost Recovery Decision Document Not to Sue and the 10-point analysis, the past costs that will not be recovered (Past Costs Written Off) and the reason the costs were written off should be reported in WasteLAN.

**Bankruptcy Filing** - Credit is given based on the date that the bankruptcy strategy package is prepared or on the date of the first creditor committee meeting as documented by the summary of the meeting. These dates are reported in WasteLAN as the SubAction "Creditors Committee Meeting" and/or "Bankruptcy Strategy Package" actual completion dates (Actual Complete). These SubActions are entered with the Claim in Bankruptcy action. For each Claim in Bankruptcy, the "Federal Costs Sought - Past" must be entered into WasteLAN.

### **Changes in Definition FY02/03 - FY04/05:**

None.

### **Special Planning/Reporting Requirements:**

All dates must be entered into WasteLAN. Credit for referrals is based on the referral package, not on the number of sites. Credit will be withdrawn if a case is returned to the region by DOJ or HQ for additional work but will be reinstated upon re-referral. For each settlement, the region must enter "Federal Costs Settled - Past" into WasteLAN. For each judicial referral, regions must enter "Federal Costs Sought - Past." For each decision not to pursue cost recovery, the "Past Costs Written Off" must be entered. Accomplishments are reported on a site-specific basis. Any changes to the target require prior approval by the OSRE. This is a GPRA annual performance goal.

## ***s. RECOVERABLE PAST COSTS THAT HAVE BEEN ADDRESSED BY PROGRAM TO DATE VIA SETTLEMENTS, WRITE-OFFS, OR REFERRALS***

### **Definition:**

This measure supports the goal of Trust Fund Stewardship by reporting the amount and percentage of recoverable past costs that were addressed versus all recoverable past costs (i.e., past costs eligible for recovery, program-to-date). The regions are encouraged to address all of the recoverable past costs through enforcement activities so that the maximum amount of recoverable funds can be obtained to support Superfund cleanups.

Recoverable past costs are past costs that are considered potentially recoverable. These costs include EPA direct and indirect costs, plus contractor program management costs which are allocated to sites annually.

Some Superfund past costs are considered unrecoverable, including funds expended at orphan sites, costs that were compromised during previous cost recovery efforts, and costs that were previously written off. Indirect costs over and above those that are recoverable under the current indirect rates are also considered not recoverable.

*Past Costs Addressed* are costs addressed through administrative settlements, Section 107 or **106 and 107** judicial referrals including settlements for past costs under a CD, decision documents or 10-point settlement analysis documents not to pursue cost recovery, or bankruptcy filing. Depending on the enforcement action, the "Federal Costs Settled - Past," "Past Costs Written Off," or "Federal Costs Sought - Past" must be entered into WasteLAN.

*Recoverable Past Costs* include all past costs at the site, regardless of cost recovery status or previous cost recovery efforts. Recoverable costs include direct response costs, indirect costs allocated to the site using the applicable indirect rates, an estimate of contractor program management costs as allocated to the site, and any other costs charged to the site, as indicated by the appropriate Financial Management Division (FMD) system such as, Integrated Financial Management System (IFMS), the Superfund Cost Organization and Recovery Enhancement System (SCORES), or Superfund Cost Recovery Package and Image On-Line System (SCORPIOS). The percentage of recoverable past costs addressed is the amount of past costs addressed compared to the estimated total amount of recoverable past costs.

### **Definition of Accomplishment:**

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites. Cost may be addressed through one or more of the following actions:

**Administrative Settlements** - Credit is given on the date the Regional office or DOJ receives payment from the PRPs in direct response to a demand letter for voluntary cost recovery, or the date the Regional Administrator or delegatee signs the Administrative Order on Consent (AOC) or Consent Agreement (CA) that recovers 100 percent of the Trust Fund expenditures or settles a claim where the total response cost are less than \$500,000. The accomplishment of the administrative settlement is recorded in WasteLAN as the actual completion date (Actual Complete) of the administrative/voluntary cost recovery (Action Name = Admin/Voluntary Cost Recovery), AOC (Action Name = Admin Order on Consent), or CA (Action Name = Consent Agreement). If the settlement is compromised and total response costs are more than \$500,000, the AOC must be sent to DOJ for approval prior to signature by the Regional Administrator.

**Section 107 or 106 and 107 Judicial Referrals** - Credit is given on the date of the Regional Administrator's memo transmitting the referral to DOJ or HQ [Action Name = Litigation (Generic), Section 107 Litigation, or Section 106 & 107 Litigation] as recorded in WasteLAN as the actual start date (Actual Start).

This includes CD settlements (Action Name = Consent Decree) for RD/RA with a cost recovery component and CD settlements for cost recovery only. For CD settlements for RD/RA with a cost recovery component and CD settlements that were not the result of prior litigation, credit is given on the date of the Regional Administrator's memo transmitting the settlement to DOJ or HQ. This date is reported in WasteLAN as the actual start date (Actual Start) of the CD (Action Name = Consent Decree). For CD settlements that are for cost recovery only and result from a previous litigation referral, the CD actual start date (Actual Start) is not reported in WasteLAN. Only the lodged (SubAction Name = Lodged by DOJ) and entered (SubAction Name = Entered by Court) SubActions, the SubAction actual completion date (Actual Complete), and the actual completion date (Actual Complete) of the CD are recorded. The actual completion date of the CD is the date it is entered by the court.

**Decision Documents not to Pursue Cost Recovery** - Credit is given when the decision document (Action Name = Cost Recvry Decsn Docmt - No Sue) is signed by the Regional office and recorded in WasteLAN as the actual completion date (Actual Complete). The decision not to pursue cost recovery also may be documented in a 10-point settlement analysis. For both the Cost Recovery Decision Document Not to Sue and the enforcement instrument 10-point settlement analysis, the past costs that will not be recovered (Past Costs Written Off) and the reason(s) the costs were written off should be reported in WasteLAN.

**Bankruptcy Filing** - Credit is given based on the date that the bankruptcy strategy package is prepared or on the date of the first creditor committee meeting as documented by the summary of the meeting. These dates are reported in WasteLAN as the SubAction "Creditors Committee Meeting" and/or "Bankruptcy Strategy Package" actual completion dates (Actual Complete). These SubActions are entered with the Claim in Bankruptcy action. For each Claim in Bankruptcy, the "Federal Costs Sought - Past" must be entered into WasteLAN.

### **Changes in Definition FY02/03- FY04/05:**

None.

### **Special Planning/Reporting Requirements:**

This is a program measure. See Definition and Definition of Accomplishment.

#### ***t. NUMBER AND AMOUNT OF CERCLA PENALTIES ASSESSED***

##### **Definition:**

This measure supports the goal of Trust Fund Stewardship by providing information on the amount and number of final CERCLA penalties assessed. The measure identifies monies that are provided for the Trust Fund as a result of penalties assessed for violations of the CERCLA statute. The measure also supports the systematic reporting on the programmatic impacts of compliance and enforcement.

This measure is expressed as the dollar amount of the final assessed penalty under CERCLA. For civil judicial cases, this amount is the penalty assessed against the defendant(s) as specified in the Consent Decree or Court Order entered by the court or agreed to by the defendant(s). For administrative cases, it is the penalty agreed to in the final AOC or assessed directly by EPA under Section 109(a) and (b) of CERCLA.

The number of CERCLA penalties assessed is the number of civil, judicial, or administrative enforcement actions where a penalty was assessed under a CERCLA statute.

##### **Definition of Accomplishment:**

The number of CERCLA penalties assessed is the total number of enforcement actions (CDs, AOCs, judgments, or court orders) where a penalty was assessed under a CERCLA statute, including actions that are only for CERCLA or multi-media actions that contain a CERCLA component.

The value of CERCLA penalties assessed is the total dollar amount of penalties assessed under the CERCLA statute for violations of requirements contained in civil, judicial, and administrative enforcement actions. If the enforcement action consists of multi-media actions, this measure will only include the amount that is assessed under the CERCLA statute, to the extent that it can be specified.

##### **Changes in Definition FY02/03 - FY04/05:**

Changed Enforcement Docket System to Integrated Compliance Information System (ICIS) which was implemented in FY 02.

##### **Special Planning/Reporting Requirements:**

The "Stipulated Penalty Assessed - Amount Imposed" and/or "Statutory Penalty Assessed - Amount Imposed" should be entered into WasteLAN through the Penalty/SEP screens associated with the enforcement instrument. The number and value of CERCLA penalties will be obtained from the Office of Compliance using information reported in the Integrated Compliance Information System (ICIS). This is a program measure.



***u. NUMBER AND AMOUNT OF CERCLA SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)***

**Definition:**

SEPs are environmentally beneficial projects which a violator agrees to undertake in settlement of an enforcement action, but which the violator is not otherwise legally required to perform. The SEP could be for public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, emergency planning and preparedness, or other program-specific projects.

This measure supports the goal of Trust Fund Stewardship by measuring the number and value of SEPs under CERCLA. The measure provides the opportunity for the violator to undertake environmentally beneficial projects that will potentially prevent the creation of additional Superfund sites, thus avoiding the need for using Trust Fund monies for future cleanups. The measure also supports the systematic reporting on the programmatic impacts of compliance and enforcement.

**Definition of Accomplishment:**

- ☐ The number of CERCLA SEPs is the total number of cases where a SEP was agreed upon under a CERCLA statute, including cases that are only for CERCLA or multi-media cases that contain a CERCLA component.
- ☐ The value of the CERCLA SEPs agreed upon is the estimated value of the SEP under the CERCLA statute for civil, judicial, and administrative enforcement actions. If the action is a multi-media action, the SEP will be the total value for all media not just media covered under CERCLA.

**Changes in Definition FY02/03 - FY04/05:**

Changed Enforcement Docket System to Integrated Compliance Information System (ICIS) which was implemented in FY 02.

**Special Planning/Reporting Requirements:**

The following information should be entered into WasteLAN through the Penalty/SEP screens associated with the enforcement instrument: the SEP Information - EPA Estimated Value and SEP Information - Category. The number and value of SEPs agreed upon under CERCLA will be obtained from the Office of Compliance using the information reported in the Integrated Compliance Information System (ICIS) . This is a program measure.

***v. USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)***

**Definition:**

This measure reports the number of sites where ADR techniques are employed in an attempt to reach settlement under CERCLA or to resolve disputes over cleanup standards and Applicable or Relevant and Appropriate Requirements (ARARs). Sites using ADR tools are divided into two categories: sites where the Agency employs and funds ADR in the CERCLA process; and sites where the Agency supports private party use of ADR in the CERCLA process. It does not include cases where the private parties use ADR without the Agency's support. This measure includes use of ADR in disputes regarding allocation of liability; in disputes with PRPs regarding alleged noncompliance with a settlement agreement; and in disputes with States and tribes regarding ARARs and cleanup standards. This measure will report site-specific use of ADR.

**Definition of Accomplishment:**

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites for ADR activities when:

- ☐ ***Allocation of Shares of Responsibility*** - The parties involved choose a neutral allocator. The date on which the allocator is chosen is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of “Allocation” should also be entered.
- ☐ ***Arbitration*** - The parties involved in binding or advisory negotiation (in a judicial setting) choose an arbitrator. The date on which the arbitrator is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of “Arbitration” should also be entered.
- ☐ ***Convening*** - A neutral third party is selected to organize disputants for negotiations, assist them in the decision to use ADR, and assist in the selection of an ADR professional. The date on which the neutral third party is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of “Convening” should also be entered.
- ☐ ***Fact Finding*** - A specialized neutral party with subject matter expertise is selected to resolve technical or factual issues. The date that the specialized neutral party is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of “Fact Finding” should also be entered.
- ☐ ***Mediation*** - The parties select a neutral third party with no decision-making authority to assist during non-binding negotiations. The date on which the neutral party is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of “Mediation” should also be entered.
- ☐ ***Mini-Trial*** - The involved parties begin the mini-trial. The date on which the mini-trial begins is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of “Mini-Trial” should also be entered.
- ☐ ***Neutral Evaluation*** - A neutral party is selected to assist a negotiation team in evaluating the potential for settlement or use of ADR professionals. The date on which the neutral party is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of “Neutral Evaluation” should also be entered.
- ☐ ***Settlement Judge*** - A settlement judge (other than the one hearing the case) is selected (or agreed upon) to act as a mediator during the negotiation and settlement discussions of the parties. The date on which the settlement judge is selected is recorded in WasteLAN as the actual start date (Actual Start) of the Alternative Dispute Resolution action. The ADR Process of “Settlement Judge” should also be entered.

### **Changes in Definition FY02/03 - FY04/05:**

None.

### **Special Planning/Reporting Requirements:**

This is a Federal enforcement-lead (FE) action with an action name of “Alternative Dispute Resolution”. The response actions being discussed during the ADR process (“Response Actions Addressed”) and the ADR Process may be entered into WasteLAN. Credit will be based on the start date (Actual Start) of the ADR (Action Name = Alternative Dispute Resolution). This is a program measure.

**w. *NUMBER OF SETTLEMENTS WHERE EPA SETTLED BASED ON ABILITY-TO-PAY DETERMINATIONS***

**Definition:**

The measure will help assess the extent to which EPA is using ability-to-pay determinations to achieve its goal of Enforcement Fairness. The measure will report the number of administrative or judicial settlements that are reached under CERCLA with PRPs qualified as limited ability-to-pay parties. This type of settlement results in: (1) PRPs paying less than their respective portion of the cost for site cleanup based on an ability-to-pay determination; (2) Payment over time for parties with limited ability to raise annual revenues; or (3) Parties providing in-kind service in lieu of cash payments.

**Definition of Accomplishment:**

Total ability-to-pay settlements are counted as follows:

- ☐ When an AOC (Action Name = Admin Order on Consent) or Consent Agreement (CA) (Action Name = Consent Agreement) with the ability-to-pay PRPs is signed by the Regional Administrator or delegatee and reported in WasteLAN as the actual completion date (Actual Complete).
- ☐ When the Regional Administrator signs the memorandum transmitting the CD (Action Name = Consent Decree) signed by the ability-to-pay parties (and the Regional Administrator) to DOJ or HQ as reported in WasteLAN as the actual start date (Actual Start).

**Changes in Definition FY02/03- FY04/05:**

None.

**Special Planning/Reporting Requirements:**

This is a program measure. An Enforcement Instrument Categories Selected of "Ability to Pay" needs to be entered into WasteLAN .

**x. *PROSPECTIVE PURCHASER AGREEMENTS (PPAs) -ASSESSED AND FINALIZED***

**Definition:**

In January 2002, CERCLA was amended through enactment of Public Law 107-118, titled the Small Business Relief and Brownfield Revitalization Act ("Brownfields Amendments"). Among other things, the Brownfields Amendments provide a limitation on liability for persons who qualify as bona fide prospective purchasers. Congress' intent in enacting this provision was to remove certain liability barriers to purchases of property and encourage redevelopment. While EPA believes the necessity for PPAs has been largely addressed by congressional action, the Agency recognizes that in limited instances the public interest will be served by entering into PPAs or some other form of agreement. This measure, therefore, will continue to report progress toward both the goals of enforcement fairness, and redevelopment of contaminated properties in these limited instances. This measure will quantify the number of prospective purchaser requests received and addressed by the Agency and the number of prospective purchaser agreements signed.

**For the purpose of reporting, this measure will count:**

- 1) The number of written requests (containing all necessary information required by EPA) for prospective purchaser agreements received by the Agency.
- 2) The number of written requests (with all necessary information required by EPA) that the Agency has denied, or the prospective purchasers have withdrawn.
- 3) The number of final proposed settlements sent to prospective purchasers for signature, in the form of Administrative Orders on Consent (AOC), Consent Agreements (CA), or Consent Decrees (CD).
- 4) The number of finalized settlement agreements (AOCs, CAs, CDs) that include prospective purchaser provisions.

### **Definition of Accomplishment:**

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites:

- **Prospective Purchaser Requests Assessed:** This is the point at which the Agency has completed its work towards addressing a request for a prospective purchaser agreement, and the PPA request has been received from the potential or actual purchaser, with all necessary information required by EPA (Action Name = PPA Assessment and SubAction Name = All Necessary Information Received by EPA and the Action Actual Start Date and SubAction Actual Complete Date are entered into WasteLAN). The request has been assessed when the Agency denies the request, or the prospective purchaser withdraws the request, or the Agency has written and forwarded a final proposed settlement to the prospective purchaser for signature (Action Actual Complete with Action Qualifier = Request Denied or Withdrawal of Application by Requesting Party; or SubAction Name = Final Proposed Settlement Sent to Prospective Purchaser and SubAction Actual Complete Date).
- **Prospective Purchaser Agreement:** This is the completion of a PPA based on the date (Actual Complete) the Administrative Order on Consent (AOC) or Consent Agreement (CA) (Action Name = Admin Order on Consent or Consent Agreement) with a PPA component is signed by the Regional Administrator or delegatee or the date (Actual Start) the CD (Action Name = Consent Decree) with a PPA component is referred by the Regional Administrator or delegatee to either DOJ or HQ. Regions also must enter the Enforcement Instrument Category to indicate a PPA (Enforcement Instrument Categories Selected = Prospective Purchaser Agreement).

### **Changes in Definition FY02/03- FY04/05:**

Changed PPA assessments and PPAs signed to program measures.

### **Special Planning/Reporting Requirements:**

For each settlement, the region should enter the following information into WasteLAN: "Work PRP Will Perform - Value" and/or "Federal Costs Settled - Future" and "Response Actions Pd by Parties;" and/or "Federal Costs Settled - Past", "Response Actions Reimbursed", and/or "Other Relief Achieved" of "Other Activities for Cost Recovery"; and an Enforcement Instrument Categories Selected of "Prospective Purchaser Agreement". The number of PPA assessments and PPAs signed are program measures .

## ***y. ISSUANCE OF COMFORT/STATUS LETTERS***

### **Definition:**

This measure supports EPA's Brownfields Program goals by facilitating the cleanup and reuse of previously used properties. Parties interested in purchasing, developing, or operating these properties are provided information, upon request, regarding the potential for EPA actions. Comfort/status letters, while providing some assurances, are intended solely for informational purposes and only communicate EPA's intent with regard to enforcement or response authorities. Comfort/status letters do not provide a release from CERCLA liability, and therefore, are not considered "no action assurances." Any response to a solicitation for information on EPA's involvement or potential involvement/interest in a property qualify as a comfort/status letter.

### **Definition of Accomplishment:**

The start date (Actual Start Date) for this action is the date that a written request is received by the Agency for a comfort/status letter from an interested party. If the comfort/status letter is a windfall lien or reasonable steps comfort/status letter, Regions must indicate this in WasteLAN (Action Qualifier = Windfall Lien or Reasonable Steps). A comfort/status letter is accomplished (Actual Complete Date) the day it is signed by the appropriate Regional Official.

**Changes in Definition FY02/03 - FY04/05:**

Changed Definition to reflect the Small Business Liability Relief and Brownfields Revitalization Act. Added entry of type of comfort/status letter in WasteLAN.

**Special Planning/Reporting Requirements:**

This is a program measure. Regions should track the property/site specific issuance of comfort/status letters electronically in WasteLAN. For each comfort/status letter that is a windfall lien or reasonable steps one, Regions should enter the Action Qualifier of “ Windfall Lien” or “Reasonable Steps” respectively into WasteLAN.

***z. ORPHAN SHARE - EPA OFFER AND COMPENSATION*****Definition:**

This measure reports on EPA efforts to compensate parties for the portion of the response costs attributable to insolvent and defunct parties (orphan share).

This measure includes negotiations and settlements for RI/FS, RD/RA, time-critical (TC) or non time -critical (NTC) removals, or appropriate cost recovery cases. This measure will report: 1) the number of negotiations where EPA offered to compensate for a portion of the orphan share; 2) the Maximum Amount Appropriate for Compensation (MAAC) under the 1996 Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals and the 1997 Cost Recovery Addendum (dated: September 30, 1997); 3) the actual amount of compensation offered; 4) the number of settlements where EPA compensated for a portion of the orphan share; 5) the actual dollar amount of the orphan share compensated by EPA; and 6) the actual date the region made the offer.

Orphan share compensation offers are subject to the adequacy of cleanup program funding, and eligibility requirements under the policies. Orphan share compensation is *not* available at sites where there are no orphan parties, federal facilities, sites where every PRP is liable as a current or former owner and/or operator and the region has not identified any generator/transporter (i.e. “owner-operator only” sites), or sites where PRPs are performing work pursuant to a UAO, unless such parties are willing to convert the UAO to a CD. All other sites are eligible sites for purposes of this measure for work (i.e., Remedial Design/Remedial Action and Non-Time Critical Removal) negotiations at NPL sites. The method for determining the appropriate compensation to be offered by EPA is provided in the “Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals” dated June 3, 1996 and the 1997 Cost Recovery Addendum (dated: September 30, 1997). The MAAC should not exceed the lesser of the following ceilings: 1) the orphan share; 2) the sum of all EPA unreimbursed past costs and EPA’s projected costs of overseeing the design and implementation of the Record of Decision (ROD) remedy, TC or NTC removal costs; or 3) 25 percent of the projected ROD remedy, TC or NTC removal costs at the site.

It should be noted that orphan share compensation at RI/FSs, time critical removals and non-NPL sites/Superfund Alternative sites is discretionary under the 1996 Orphan Share Policy. Although Regions should offer orphan share compensation during settlement negotiations for RD/RA and non-time critical removal actions at NPL sites, it is not required to offer orphan share compensation at time critical removals and non-NPL sites/ Superfund Alternative sites.

**Definition of Accomplishment:**

Credit is given at eligible non-Federal facility non-owner/operator only NPL, Superfund Alternative, and non-NPL sites for negotiations where EPA offered to compensate for a portion of the orphan share. In order to receive credit for orphan share compensation in any case, at a minimum, the PRP must have been informed that part of the Federal compromise at the site is attributable to orphan share. In negotiations for work, the PRP must be informed about the amount of the Federal compromise attributable to orphan share under the MAAC analysis. Credit is given where EPA **offered to compensate** for orphan share when:

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- ☐ The General Notice Letter (GNL) (for removals), first Special Notice Letter (SNL), Letter for Orphan Share Compensation (for on-going negotiations), or Memorandum for the Record for oral offers is signed by the appropriate EPA official for the site or operable unit (OU). The Memorandum of Records for oral offers may be, for example, a memorandum to the case file memorializing the oral offer. This date is reported in WasteLAN as the actual start date (Actual Start) of negotiations [Action Name = RI/FS Negotiations, RD/RA Negotiations, Removal Negotiations, or Negotiations (Generic)] or the completion date (Actual Complete) of the Letter for Orphan Share Compensation SubAction [SubAction Name = Letter for Orphan Share Compensation] or Memorandum for the Record SubAction [SubAction Name = Memorandum for the Record]; or
- ☐ A Section 122(a) waiver of SNL signed by the appropriate EPA official with the intent to pursue negotiations without moratorium procedures. This date is reported in WasteLAN as the actual start date (Actual Start) of negotiations [Action Name = RI/FS Negotiations, RD/RA Negotiations, Negotiations (Generic), or Removal Negotiations]; or
- ☐ A Demand Letter, Letter for Orphan Share Compensation (for on-going negotiations), or Memorandum for the Record for oral offers for cost recovery signed by the appropriate EPA official is sent to the parties. This date is reported in WasteLAN as the actual start date (Actual Start) of negotiations [Action Name = Cost Recovery Negotiations] or the completion date (Actual Complete) of the Letter for Orphan Share Compensation SubAction [SubAction Name = Letter for Orphan Share Compensation] or Memorandum for the Record SubAction [SubAction Name = Memorandum for the Record].

Credit is given at eligible non-Federal facility on-owner/operator only NPL, Superfund Alternative, and non-NPL sites where EPA **compensated** for a portion of the Orphan Share as follows:

- ☐ A CD (Action Name = Consent Decree) and a 10-point settlement analysis for RD or RA is signed under Section 106, **106 and 107**, 104(a), 104(b), or for cost recovery only under Section 107. The date when the Regional Administrator signs the memorandum transmitting the CD, signed by the parties and the Regional Administrator, to DOJ is reported in WasteLAN as the actual start date (Actual Start); or
- An AOC (Action Name = Admin Order on Consent) for RI/FS, a time-critical or NTC removal, or RD only is signed by the Regional Administrator or delegatee. The date on which the AOC is signed is reported in WasteLAN as the actual completion date (Actual Complete). For AOCs that are amended to include a time-critical or NTC removal, or RD only, the SubAction "Enforcement Action Amended" and the SubAction actual completion date (Actual Complete) must be entered into WasteLAN; or
- An AOC or Consent Agreement (CA) (Action Name = Admin Order on Consent or Consent Agreement) for cost recovery under Section 122(h) is signed by the Regional Administrator or delegatee. The date on which the AOC or CA is signed is reported in WasteLAN as the actual completion date (Actual Complete). For AOCs or CAs that are amended to include cost recovery, the SubAction "Enforcement Action Amended" and the SubAction actual completion date (Actual Complete) must be entered into WasteLAN.

## Changes in Definition FY02/03 - FY04/05:

Changed Orphan Share Compensation Offered to a program measure.

## Special Planning/Reporting Requirements:

Orphan Share Compensation Offered for **work** (i.e. Remedial Design/Remedial Action and Non-Time Critical Removal) negotiations at NPL sites is a program measure. The program measure is to offer orphan share compensation at 100% of eligible sites in work (i.e. Remedial Design/Remedial Action and Non-Time Critical Removal) negotiations at NPL sites. In addition, Orphan Share Compensated is a program measure. The applicable "Response Actions Pd by Parties," must be entered into WasteLAN. Indicators on the existence of an orphan share at a site, including whether the orphan share policy applies for work at a site, an orphan share compromise was offered or compensated by EPA, the MAAC and ceiling type, the past and anticipated future costs offered and compensated by EPA will be entered into WasteLAN.

***aa. NON-EXEMPT DE MICROMIS PARTIES SETTLEMENTS AND NUMBER OF PARTIES***

**Definition:**

This measure reports the total number of administrative or judicial settlements that are reached solely under Section 122 of SARA, with PRPs qualified as non-exempt de micromis. It is rather unusual in that it measures success inversely. The lower the number of non-exempt de micromis parties settlements, the more successful the Agency's non-exempt de micromis policy.

**Definition of Accomplishment:**

Non-exempt de micromis parties settlements at non-Federal facility NPL, Superfund Alternative, and non-NPL sites include:

- ☐ An AOC (Action Name = Admin Order on Consent) signed by the Regional Administrator or delegatee, as reported in WasteLAN, as the actual completion date (Actual Complete).
- ☐ When the Regional Administrator signs the memorandum transmitting the Consent Decree (Action Name = Consent Decree), signed by the non-exempt de micromis parties and the Regional Administrator to DOJ or HQ, as reported in WasteLAN, as the actual start date (Actual Start).

The number of signatories to the settlement is system generated in WasteLAN from the identification of the PRPs associated with the settlement.

The following information should be entered into WasteLAN:

- ☐ Enforcement Instrument Categories Selected of "Non-exempt De Micromis";
- ☐ PRPs that signed settlement (Parties Associated with Action, Party Name).

To indicate the non-exempt de micromis parties that signed the settlement, the following information must be entered for each party on the Involvement screen:

- ☐ Basis of Liability of "Non-exempt De Micromis Party"; and
- ☐ Involvement Type of "Generator" or "Transporter".

**Changes in Definition FY02/03 - FY04/05:**

Changed to non-exempt de micromis parties and settlements.

**Special Planning/Reporting Requirements:**

While EPA will enter into non-exempt de micromis parties settlements when extremely small volume contributor parties are threatened with suit, the ultimate measure of success of this policy will be that non-exempt de micromis parties are no longer pursued and there is no need to enter into such settlements (see above). This is a program measure.

The number of signatories to the settlement will be system generated from the identification of the parties associated with the settlement.

## ***bb. PRP OVERSIGHT ADMINISTRATION***

### **Definition:**

Through the Superfund Reform on the Administration of PRP Oversight (OS), EPA recognizes the value of working together with PRPs with whom the Agency has settlement agreements as a means to promote appropriate oversight that ensures the development and implementation of protective cleanups; gives careful consideration to the associated costs being charged to PRPs; and maximizes EPA recovery of oversight cost. This measure reports EPA's efforts to work with PRPs to maximize the effectiveness and efficiency of EPA oversight and to send timely bills for oversight.

This measure applies to all PRPs at non-Federal facility NPL, Superfund Alternative, and non-NPL sites who:

- ☐ Are conducting, under Federal oversight, the non-time-critical removal action (NTCRA), remedial investigation/feasibility study (RI/FS), remedial design (RD), or remedial action (RA) phase of a cleanup, AND
- ☐ Have an Administrative Order on Consent (AOC), Consent Decree (CD), or other settlement document in place with EPA that provides for payment of oversight costs.

### **Definition of Accomplishment:**

The annual accomplishment target shall be based on the number of agreements (as described in 2 above) in place for RP-lead events that will take place during the fiscal year. The regions will accomplish the following objectives for each PRP or group of PRPs that has such an agreement and is required to pay oversight costs:

The date of the accomplishment for this target is the later of the dates documenting completion of each of the actions below. Credit is given based on the date that:

- An offer (personal contact is strongly encouraged) is made to PRPs to discuss EPA's oversight expectations for upcoming activities. This date is reported in WasteLAN as the SubAction "Offer to Discuss EPA Oversight Expectations w/ PRPs" actual completion date (Actual Complete); AND
- An oversight bill consistent with the enforcement instrument is issued to PRPs or an accounting of costs is provided to PRPs. This date is reported in WasteLAN as the SubAction "Issuance of Oversight Bill" or as "Accounting of Oversight Costs Incurred" actual completion date (Actual Complete). If the settlement document is signed or referred within the current fiscal year only the "Offer to discuss EPA Oversight Expectations with PRPs" subaction is required.

### **Changes in Definition FY02/03 - FY04/05:**

Removed reference to work planning process in Special Planning/Reporting Requirements since that information will be provided in the annual Superfund Work Planning memorandum.

### **Special Planning/Reporting Requirements**

This is a program target. For the purposes of this measure only, Headquarters shall assume, unless otherwise informed by the regions, that PRPs that have entered into agreements with EPA will receive annual oversight bills unless the settlement was entered into in the current fiscal year. In that event no bill is required; however, the region will be expected to offer to meet with the PRPs to discuss oversight expectations. The regions will identify those actions for which PRPs are required to pay oversight costs.



**cc. SETTLEMENTS DESIGNATING DEPOSITS TO SPECIAL ACCOUNTS****Definition:**

This measure will assess the extent to which EPA is able to direct the deposit of settlement funds into Special Accounts under CERCLA Section 122(b)(3), in its efforts to increase fairness and promote PRP settlements. EPA is able to retain and apply the interest from these accounts to clean up the site at which the settlement occurred. Funds deposited in Special Accounts are immediately accessible for response costs, but may only be used to support response actions at the site(s) covered by the settlement. Funds deposited into a Special Account may be the result of response costs achieved under: *de minimis*, ability to pay, bankruptcy, cashout, Prospective Purchaser Agreement (PPAs), or other settlements. For all CERCLA settlements where PRPs agree to make cash payments toward response costs at a site (i.e. cashout and/or cost recovery settlements), the measure will report the following:

- ☐ The total number of cashout and cost recovery settlements, and the estimated amount of response costs achieved from those settlements;
- ☐ The number of settlements which designate funds to Special Accounts for response costs, and the percentage of these settlements compared to the total number of cashout and cost recovery settlements; and
- ☐ The amount of funds designated to Special Accounts by the settlement for response costs and the percentage of these funds compared to the total amount of response costs achieved from all cashout and cost recovery settlements.

**Definition of Accomplishment:**

This measure counts any settlement where there is a payment provision where funds will be deposited in a Special Account as follows:

- An Administrative Order on Consent (AOC) or Consent Agreement (CA) (Action Name = Admin Order on Consent or Consent Agreement) is signed that includes a payment provision, where funds will be placed in a special account. The date on which the Regional Administrator or delegatee signs the AOC or CA is reported in WasteLAN as the actual completion date (Actual Complete); or
- A signed Consent Decree (CD) (Action Name = Consent Decree) referred to DOJ/HQ under Section 106, 107, or 106 and 107 that includes a payment provision where funds will be placed in a Special Account. The date on which the Regional Administrator signs the memorandum transmitting the CD, signed by the parties and the Regional Administrator to DOJ or HQ is reported in WasteLAN as the actual start date (Actual Start). For CD settlements that are for cost recovery only and result from a previous litigation referral, regions should not add a CD start date (Actual Start). Only the lodged (SubAction = Lodged by DOJ) and entered (SubAction name = Entered by Court) SubActions, their actual completion dates (Actual Complete), and the actual completion date (Actual Complete) of the CD will be recorded. The actual completion date of the CD is the date it is entered by the court. If the actual completion date for the "Lodged by DOJ" SubAction exists, credit will be given in the FY identified by this completion date.

**Changes in Definition FY02/03 - FY04/05:**

None.

### **Special Planning/Reporting Requirements:**

This is a program measure. Data that must be entered into WasteLAN for these settlements include:

- ☐ Federal Costs Settled - Past (for Cost Recovery Settlements);
- ☐ Federal Costs Settled - Future (for Cashout Settlements);
- ☐ Enforcement Instrument Categories Selected of “Cashout” (for Cashout Settlements);
- ☐ Response Actions Paid by Parties (for Cashout Settlements);
- ☐ Deposit to EPA Special Account; and
- ☐ Special Account Deposit Provision Flag.

### ***dd. DEPOSITS INTO SPECIAL ACCOUNTS***

#### **Definition:**

This measure will report the amount of all actual deposits into Special Accounts. This measure will be used to answer the question: How much money has EPA deposited into Special Accounts for response actions at Superfund sites? Funds deposited into a Special Account may be the result of response costs achieved under: *de minimis*, ability to pay, bankruptcy, cashout, Prospective Purchaser Agreement (PPAs), or other settlements. Funds deposited in Special Accounts are immediately accessible for response costs at the site(s) covered by that Special Account. The source of the information reported under this measure is periodic extraction of information from EPA’s Integrated Financial Management System (IFMS).

The measure will report the following:

- ☐ For each site for that fiscal year, the total amount of actual deposits into Special Accounts; and
- ☐ For each region for that fiscal year, the total amount of actual deposits into Special Accounts.

#### **Definition of Accomplishment:**

Regions transfer the funds to the Cincinnati Financial Management Center (CFMC) for deposit in the Special Account. Deposit dates are recorded by CFMC in IFMS. CFMC extracts data from IFMS for tracking and reporting purposes. This measure counts all deposits made at the time that Special Accounts are established and any subsequent deposits made to these accounts as follows:

- ☐ The date on which a Special Account is established by the CFMC with the initial deposit amount; and
- ☐ The date on which any subsequent deposits are made by CFMC to existing Special Accounts.

#### **Changes in Definition FY02/03 - FY04/05:**

None.

**Special Planning/Reporting Requirements:**

This is a program measure. Data that must be entered into IFMS includes:

- Amount of deposits into Special Accounts; and
- The date of deposits into Special Accounts.

***ee. SETTLEMENTS DESIGNATING DISBURSEMENTS FROM SPECIAL ACCOUNTS TO PRPS*****Definition:**

This measure will quantify the number of settlements in which EPA has agreed to disburse Special Account funds to PRPs for response actions at the site where the Special Account funds were collected. Response actions can be removal or remedial, under administrative or judicial settlements (under Agency guidance, Special Account funds are not available to parties performing work under a UAO).

For all CERCLA settlements where PRPs agree to conduct response actions at the site for which the Special Account was created, the measure will report the following:

- ☐ The number of response settlements which designate disbursement from Special Accounts to PRPs who conduct the response action; and
- ☐ The amount of funds designated to be disbursed from Special Accounts to PRPs in response action settlements.

**Definition of Accomplishment:**

This measure counts all settlements where there is a provision for disbursement of Special Account funds to PRPs as follows:

- A signed Consent Decree (CD) (Action Name = Consent Decree) is referred to DOJ/HQ under Section 106 or **106 and 107** that includes a disbursement provision. The date on which the Regional Administrator signs the memorandum transmitting the CD, signed by the parties and the Regional Administrator to DOJ or HQ is reported in WasteLAN as the actual start date (Actual Start); or
- An Administrative Order on Consent (AOC) or Consent Agreement (CA) (Action Name = Admin Order on Consent or Consent Agreement) is signed that includes a disbursement provision. The date on which the Regional Administrator or delegatee signs the AOC or CA is reported in WasteLAN as the actual completion date (Actual Complete).

**Changes in Definition FY02/03 - FY04/05:**

None.

**Special Planning/Reporting Requirements:**

This is a program measure. Data that must be entered into WasteLAN for these settlements include:

- Response Actions Pd by Parties;
- Work PRP Will Perform - Value;
- Paid from Special Account; and
- Special Account Disbursement Provisions Flag.

***ff. DISBURSEMENTS FROM SPECIAL ACCOUNTS FOR RESPONSE ACTIONS***

**Definition:**

This measure will assess the extent to which EPA uses Special Account funds for site cleanup by reporting the amount of all actual disbursements from Special Accounts for response actions. This measure will be used to answer the question: How much money has EPA disbursed from Special Accounts for response actions at Superfund sites? This measure will capture disbursements to all recipients, whether for PRP-lead, State-lead, or EPA-lead response actions since Special Account funds can be used to pay PRPs', States', and EPA's response costs .

This measure has sub-measures, which will report the amount of all actual disbursements from Special Accounts to PRPs, EPA, and States for response actions. The PRP sub-measure will be used to answer the question: How much money has EPA disbursed from Special Accounts to PRPs for response actions at Superfund sites? This sub-measure follows the measure entitled, "Settlements Designating Disbursements from Special Accounts to PRPs." Together, these answer the question: Of the amount designated in settlements to be disbursed to PRPs for response actions, what is the amount actually disbursed to PRPs? This measure and this sub-measure will be used to answer the question: Of the total amount disbursed from Special Accounts for response actions, what percentage is disbursed to PRPs? The State sub-measure will be used to report the amount of money disbursed from Special Accounts to States for response actions at Superfund sites. The EPA sub-measure will be used to report the amount of money disbursed from Special Accounts to EPA for response actions at Superfund sites. The latter sub-measure will include amounts given to EPA which the Agency subsequently sends to entities other than PRPs and States for response actions at Superfund sites.

The source of the information reported under this measure is periodic extraction of information from EPA's Integrated Financial Management System (IFMS).

The measure will report the following:

- ☐ For each site for that fiscal year, the total amount of actual disbursements from Special Accounts for response actions;
- ☐ For each site for that fiscal year, the total amount of actual disbursements from Special Accounts to PRPs for response actions;
- ☐ For each site for that fiscal year, the total amount of actual disbursements from Special Accounts to States for response actions;
- ☐ For each site for that fiscal year, the total amount of actual disbursements from Special Accounts to EPA for response actions;
- ☐ For each region for that fiscal year, the total amount of actual disbursements from Special Accounts for response actions;
- ☐ For each region for that fiscal year, the total amount of actual disbursements from Special Accounts to PRPs for response actions;
- ☐ For each region for that fiscal year, the total amount of actual disbursements from Special Accounts to States for response actions; and
- ☐ For each region for that fiscal year, the total amount of actual disbursements from Special Accounts to EPA for response actions.

**Definition of Accomplishment:**

Regions make disbursements from Special Accounts. Disbursements are recorded by the regions in IFMS. CFMC extracts data from IFMS for tracking and reporting purposes. This measure counts all disbursements made from Special Accounts for response actions as follows:

- The date on which the region disburses funds from the Special Account as recorded in IFMS.

The three sub-measures count all disbursements from Special Accounts to PRPs, States, and EPA for response actions as follows:

- The date on which the region disburses funds to PRPs from Special Accounts as recorded in IFMS.
- The date on which the region disburses funds to States from Special Accounts as recorded in IFMS.
- The date on which the region disburses funds to EPA from Special Accounts as recorded in IFMS.

**Changes in Definition FY02/03- FY04/05:**

None.

**Special Planning/Reporting Requirements:**

This is a program measure. Data that must be entered into IFMS includes:

- Actual disbursements from Special Accounts for response actions;
- Actual disbursements from Special Accounts to PRPs for response actions;
- Actual disbursements from Special Accounts to States for response actions;
- Actual disbursements from Special Accounts to EPA for response actions (This sub-measure is derived by subtracting the sum of the disbursements to PRPs and States from the disbursements from Special Accounts for response actions.); and
- The dates of disbursements from Special Accounts.

***gg. CLOSURE OF SPECIAL ACCOUNTS*****Definition:**

This measure will report the closure of Special Accounts. This measure will be used to answer the question: Which Special Accounts were closed in a fiscal year? How much money was transferred from the Special Account to the general part of the Superfund Trust Fund? What are the dates of these closures? The source of the information reported under this measure is periodic extraction of information from EPA's Integrated Financial Management System (IFMS).

The measure will report the following:

- For each site at which a Special Account was closed for that fiscal year, the name of the site and the total amount of money transferred to the general part of the Superfund Trust Fund.
- For each region for that fiscal year, the total number of Special Accounts closed and the amount of money transferred to the general part of the Superfund Trust Fund.

### **Definition of Accomplishment:**

Upon receipt of the signed memorandum requesting closure of a Special Account from the Regional Program Office/Financial Management Officer, the Cincinnati Financial Management Center (CFMC) will close out the Special Account and record the closeout date in IFMS. CFMC extracts data from IFMS for tracking and reporting purposes. This measure counts all transfers made at the time that Special Accounts are closed as follows:

- The date on which a Special Account is closed by the CFMC with the amount to be transferred to the general part of the Superfund Trust Fund.

### **Changes in Definition from FY 02/03 - FY 04/05:**

This is a new measure for FY 04/05.

### **Special Planning/Reporting Requirements:**

This is a program measure. Data that must be entered into IFMS include:

- Amount transferred from the Special Account; and
- The date that the Special Account is closed with the amount to be transferred from Special Accounts to the general part of Superfund Trust Fund.

## ***hh. Pre-Remedial Enforcement Action at Superfund Sites***

### ***Definition:***

This measure will support the Government Performance and Results Act (GPRA) goal of maximizing PRP participation at Superfund sites, thus promoting “Enforcement First”. The GPRA goal is for EPA to reach a settlement or take an enforcement action by the time of the Remedial Action (RA) start at 90% of non-federal Superfund sites (with RA starts during the fiscal year) that have known viable, liable parties. The objective of this measure is to take an enforcement action or to reach a settlement with PRPs prior to an RA start<sup>1</sup> at a site.

***For purposes of GPRA reporting, this measure will count:***

- The number of PRP-financed RA starts (in the FY);
- The number of Fund-financed RA starts (in the FY) with an enforcement action (i.e., Consent Decree (CD), Administrative Order on Consent (AOC), Consent Agreement (CA), Unilateral Administrative Order (UAO), voluntary cost recovery action, or litigation referral) at the site, prior to the Fund-financed RA start (in the FY).
- The number of Fund-financed RA starts (in the FY) at sites with identified viable, liable Potential Responsible Parties (PRPs), but no enforcement actions prior to a Fund-financed RA start (in the FY).

The GPRA accomplishment is the percentage resulting from the division of the numerator by the denominator as follows:

- Numerator = The number of PRP-financed RA starts (in the FY) + the number of Fund-financed RA starts (in the FY) with enforcement actions prior to the RA start.

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<sup>1</sup> As defined in Appendix B of the SPIM.

- Denominator = The number of PRP-financed RA starts (in the FY) + Fund-financed RA starts (in the FY) with prior enforcement actions at the site + Fund-financed RA starts (in the FY) with viable, liable PRPs, at the site, but no enforcement actions prior to the RA start.

**DISCLAIMER**: Regions will receive credit in the management of the Superfund program for “start” of a remedial action even though “initiation of physical on-site construction” may not have occurred for purposes of calculating a cost recovery statute of limitations. The date found in the remedial action actual start column of a CERCLIS/ WasteLAN report is a programmatic measure only, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. EPA reserves the right to change such data at any time without public notice.

### ***Definition of Accomplishment:***

This measure counts non-Federal facility NPL and PRP-financed Superfund Alternative sites with:

1. PRP-financed RA starts (in the FY) as defined in Appendix B.
2. Fund-financed RA starts (in the FY) with prior enforcement actions at the site: These are Fund- financed RA starts as defined in Appendix B with enforcement actions at the site where the following dates of these actions are prior to the start date of the Fund-financed RA:
  - + Date (Actual Complete) that the AOC, CA or UAO (Action Name = Admin Order on Consent, Consent Agreement, or Unilateral Admin Order) is signed by the Regional Administrator or delegatee. This does not include orders that are for access or information only.
  - + Date (Actual Start) that the CD settlements (Action Name = Consent Decree) is referred by the Regional Administrator or delegatee to either DOJ or HQ.
  - + Date (Actual Complete) that the CD for cost recovery only and resulting from a previous litigation referral is entered by the court. If the actual completion date for the Lodged (SubAction Name = Lodged by DOJ) exists, that date will be used instead of the entered date.
  - + Date (Actual Complete) that the Regional Office or DOJ receives payment from the PRPs in direct response to a demand letter for voluntary cost recovery (Action Name = Admin/Voluntary Cost Recovery).
  - + Date (Actual Start) of the litigation referral (Action Name = Section 106 & 107 Litigation, Litigation (Generic), Section 106 Litigation, or Section 107 Litigation).
3. Fund-financed RA starts (in the FY) with PRPs, at the site, but no enforcement actions prior to the RA start: These are Fund-financed RA starts as defined in Appendix B with no enforcement actions at the site where the date of these actions as specified in #2 above are prior to the start date of the RA, but have viable, liable PRPs designated at the site (Parties Associated with Site, Noticed/Enf Act flag is set, and Not PRP Determination Made flag is not set).

### **Calculation of Accomplishment:**

The numerator (the number of PRP-financed RA starts (in the FY) + Fund-financed RA starts (in the FY) with enforcement actions prior to the RA start), is divided by the denominator (the number of PRP-financed RA starts (in the FY) + Fund-financed RA starts (in the FY) with prior enforcement actions at the site + Fund-financed RA starts (in the FY) with viable, liable PRPs, at the site, but no enforcement actions prior to the RA start), to arrive at the GPRA percentage of RA starts with enforcement actions at sites with viable, liable PRPs.

[This measure will **not** include Fund-financed RAs at sites without enforcement actions prior to the RA start and where PRPs have not been identified.]

**Changes in Definition from FY 02/03 - FY 04/05:**

This is a new GPRA annual performance goal for FY 04.

**Special Planning/Reporting Requirements:**

This is a GPRA annual performance goal beginning in FY 04.

***ii. WINDFALL LIEN FILED***

**Definition:**

In January 2002, CERCLA was amended through enactment of Public Law 107-118, titled the Small Business Relief and Brownfield Revitalization Act ("Brownfields Amendments"). Section 107(r) provides that bona fide prospective purchasers are not liable as owner/operators for CERCLA response costs, but the property they purchase may be subject to a windfall lien where an EPA response action has increased the fair market value of the property. This lien arises "at the time at which costs are first incurred by the United States with respect to a response action at the facility." CERCLA § 107(r)(4)(B). To "perfect" the lien, EPA must file a notice of the lien in accordance with CERCLA's statutory requirements. This measure will quantify the number of windfall liens that are filed by the Agency.

**Definition of Accomplishment:**

The start date (Actual Start Date) for the windfall lien (Action Name = 107(r) Windfall Lien) is the date the lien was filed in the court by EPA in accordance with statutory requirements. The completion date (Actual Complete Date) is the date the lien was removed by the court.

**Changes in Definition FY02/03- FY04/05:**

This is a new measure for FY 04.

**Special Planning/Reporting Requirements:**

This is a program measure.

***jj. WINDFALL LIEN RESOLUTION - ASSESSED AND FINALIZED***

**Definition:**

In January 2002, CERCLA was amended through enactment of Public Law 107-118, titled the Small Business Relief and Brownfield Revitalization Act ("Brownfields Amendments"). Congress provided liability protection under CERCLA for bona fide prospective purchasers to encourage the purchase and reuse of contaminated properties. EPA may enter into a windfall lien resolution agreement with a purchaser if there is likely to be a significant windfall lien needing resolution. This measure will quantify the number of windfall lien resolution requests received and addressed by the Agency and the number of windfall lien resolution agreements signed.

**For the purpose of reporting, this measure will count:**

- 1) The number of written requests (containing all necessary information required) for windfall liens resolutions received by the Agency.
- 2) The number of written requests (with all necessary information required) that the Agency has denied, or the "bona fide prospective purchasers" have withdrawn.
- 3) The number of final proposed agreements sent to potential or actual purchasers for signature, in the form of Consent Agreements (CA).
- 4) The number of finalized agreements (CAs) that include the windfall lien resolution provisions.



**Definition of Accomplishment:**

Credit is given at non-Federal facility NPL, Superfund Alternative, and non-NPL sites:

- **Windfall Liens Resolutions Assessed:** This is the point at which the Agency has completed its work towards addressing a request for a windfall lien resolution (WLR) agreement. The WLR request has been received from the potential or actual purchaser, with all necessary information required (Action Name = Windfall Lien Assessment and SubAction Name = All Necessary Information Received by EPA and the Action Actual Start Date and SubAction Actual Complete Date are entered into WasteLAN). The request has been assessed when the Agency denies the request, or the potential or actual purchaser withdraws the request, or the Agency has written and forwarded a final proposed agreement to the potential or actual purchaser for signature (Action Actual Complete with Action Qualifier = Request Denied, Withdrawal of Request by Requesting Party; or Final Proposed Agreement Sent to Purchaser).
- **Windfall Lien Resolution Agreement:** This is the completion of a WLR Agreement based on the date (Actual Complete Date) the Consent Agreement (CA) (Action Name = Consent Agreement) with a WLR component is signed by the Regional Administrator or delegatee. Regions also must enter an Enforcement Instrument Category to indicate a WLR Agreement (Enforcement Instrument Categories Selected = Windfall Lien Resolution Agreement).

**Changes in Definition FY02/03- FY04/05:**

This is a new measure for FY 04.

**Special Planning/Reporting Requirements:**

WLR assessments and agreements are program measures. For each agreement, the region should enter the following information into WasteLAN: "Work PRP Will Perform - Value" and/or "Federal Costs Settled - Future" and "Response Actions Pd by Parties;" and/or "Federal Costs Settled - Past", "Response Actions Reimbursed", and/or "Other Relief Achieved" of "Other Activities for Cost Recovery"; and an Enforcement Instrument Categories Selected of "Windfall Lien Resolution Agreement".

***C.B SUBJECT MATTER EXPERTS***

The following exhibit identifies the subject matter experts for Appendix C (Enforcement).

**EXHIBIT C.2 SUBJECT MATTER EXPERTS**

<b>Subject Matter Expert</b>	<b>Subject Area</b>	<b>Phone #</b>
Scott Blair	Enforcement Data	(202) 564-6023
Monica Gardner	Enforcement Data	(202) 564-6053
<b>Amy Tuberson</b>	<b>Enforcement Data</b>	<b>(202) 564-5152</b>

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